

Adult Support & Protection

Finance and Property Harm

Criminal Law: finance and property

Civil legal remedies: financial and
property harm



East Ayrshire Adult Protection Committee

**Acting
against
harm**

**protecting
adults
together**

NORTH AYRSHIRE



**South Ayrshire
Adult Protection
Committee**

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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 relate not only to loss of income or property but to health and wellbeing .

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.

The document also 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**



Background

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 wellbeing, 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

Statutory

Responsibilities

Statutory bodies have a duty to report their concern if they ‘know or believe’ that an adult may be ‘an adult at risk’. Staff should follow their organisations adult protection procedures.

It is recognised that, at times, the ‘duty to report’ may pose a dilemma for staff who may feel that by doing so 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 to report the information given and to advise them of the possible consequences.

Financial Crime and Mental Capacity - Local Authority Position

Where a person has capacity

Where the person fits 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 hold financial records relating to a person to produce those records, where they know or believe a 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 in obtaining benefits information from the DWP in terms of this section, due to a loophole in the recent 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 Citizens 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.

When an individual has capacity and does not wish to take steps to deal with financial abuse 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.

Where a person does not have capacity 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 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 indications for 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 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 power 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.

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 enquire 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 abuse 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 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 this 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 benefit 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 benefits 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 require financial records to be produced in terms of s.10 of the Adult Support & 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 take the informal steps described above, while initiating the process to obtain the relevant Orders.

Direct Payments

There are a number of controls over the use and management of direct payments which allow action to be taken when an adult's direct payments are being mismanaged or taken by third parties. In the first instance, the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 are clear that there is no requirement to give the option of direct payment to an adult, where the making of such payment is likely to put their safety at risk. There are now organisations which will undertake to manage direct payments on behalf of care users and other third parties are also allowed to fulfil that function. Before payments to such third parties may be made, the Local Authority must be satisfied that the adult retains total control over the way in which the monies are expended. If at any time the Authority ceases to be satisfied that that is the case, the payment can no longer be made to the third party in question.

Where the option of direct payments has been taken up, and concerns emerge after the payments have been commenced, the regulations allow payments to be terminated where they are used, whether wholly or partly, for purposes other than the provision of the support for which they were intended. This rule applies equally to payments being managed by third parties. There is nothing in the regulations which requires this misuse to be deliberate or in some way culpable on the part of the adult: theft or embezzlement of the monies by another individual would also allow the payments to be terminated.

In addition, the use of direct payments to employ family members is strictly regulated and is usually not allowed. Where payments are being given to family members, ostensibly in return for support, it should therefore be ensured that this is strictly within the terms of the regulations. Family members who are also guardians or attorneys empowered to make decisions regarding the support the direct payment relates to are never allowed to receive payment for that support in any way. If family members are being paid from direct payments in contravention of these rules, or if there is evidence that an adult is under undue pressure to allow a family member to provide support in exchange for money coming from a direct payment the payments may, again, be stopped.

If payments are to be stopped due to misuse or contravention of the rules on payment of family members, notice must be given to the adult of the reason for the termination and the date from which it will apply. Care must be taken, in fixing that date, to ensure that an adult is not left without adequate support or with outstanding contractual obligations which they are unable to meet. Following the termination of payments, the Local Authority is not required to give the option of direct payments to the adult again.

Financial Crime and Mental Capacity - Local Authority Position

Contractual remedies

A vulnerable person who has entered into a contract may have legal remedies available to them through the law of contract. There 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 introduced 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 when 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 where detection of the perpetrators will lead to a report being submitted to the Procurator Fiscal Services. This can be very sensitive as sometimes it has been a friend or family member that has committed the crime and the victim may not wish to proceed with a criminal investigation. Where a crime has been committed, the police will investigate and gather all the available evidence and where there is a sufficiency of evidence a report will be submitted to the Procurator Fiscal for consideration.

Theft

Theft is a crime at common law and a person is guilty of theft if he or she dishonestly appropriates property belonging to someone 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.

Although the vast majority of people who look after people are scrupulously honest, there are types of theft that may be committed by people in positions of trust. For example, carers or care workers who are entrusted with a person's bank card and PIN or who, having access to personal space or belongings of people, steal from the person. There are instances of staff in institutions such as hospitals or care homes stealing from a person's locker, private space or the bank account of residents.

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 at 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.

Another case involved an older female, who was within her home address when she was waiting on a roofer that she had contacted to attend and 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 contacted, allowed him access to the house. The "roofer" had a child with him who 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 and 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 male was later traced and arrested where he pled guilty to theft and was subsequently sentenced to a Community Payback Order and Compensation payable to the complainant.

In 2011, a 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 into her own account for her own purposes and therefore was guilty of embezzlement.

Criminal offences

Police position

In 2014 the theft of monies from 10 service users was perpetrated by a senior support worker who, through the nature of their role, was in a position of trust with the people they worked with and supported.

The senior support worker was also in a position of authority and exercised considerable control over service users' monies and also over the other staff. She manoeuvred a position where she lodged benefit payments and subsequently adjusted financial records to which other staff had limited access. Annual leave was orchestrated to ensure attention was diverted from financial related matters. The senior support worker manipulated a position that was not evident through routine financial audits despite these systems being assessed by the provider as being robust.

The providers audit systems identified the embezzlement during a period of the senior support worker's unplanned absence. At the point of discovery the senior support worker still had access to financial records based in the service users' homes, removed these and destroyed the evidence trail. Within a short time frame the senior support worker was quickly dismissed from her post.

In May 2012, 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 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 after swindling money from a woman who trusted him to invest her money for her. In this case, the man purported to be a qualified and accredited accountant. He obtained her money through deception by, for example, offering to take money and make investments on her behalf, while actually keeping the money for himself. 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 total amount obtained by the man was approximately £688,000. He was sentenced to a total of nine years in prison

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.

Criminal offences

Police position

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 use to pay the woman's bills. Instead, for two years, she wrote cheques to herself and obtained £2,875. She was convicted of obtaining money transfer by deception

A person with learning disabilities was known to be vulnerable by three men (he had given money to the stepson of one of the men—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 5 years in prison.

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.



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 'stranger' and abuse of a position of trust. The following resulted in a conviction for robbery:

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 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 returned 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

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.

Criminal offences

Police position

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 persons 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. .

One case involved an older couple, who 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. Following a police investigation, a report was submitted to the Procurator Fiscal. He was prosecuted and found guilty at the Sheriff Court and was sentenced to 3 months imprisonment.

In another case, 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 doing roughcasting at the property a couple of months ago and had 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 a driveway not allowing him to go back in to the house via the rear door. At the time, police were called by the witnesses and upon attendance found one of the males was found still with the victim standing on the driveway and the second male was within the property

Investigative Considerations

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 invoking 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 may 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. Appropriate adults are available to assist witnesses, suspects or accused persons during any police investigation.

Distraction Thefts

The following case involved distraction theft:

Civil and criminal law

Trading Standards Position

Across Ayrshire, each Council's Trading Standards Service 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 Ayrshire.

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 vulnerable **adults**, tackling Doorstop 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** the 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 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 traders 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 include:

- ◆ 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 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 of 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 Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013 state that for contracts worth over £42 which are made at a distance or off trade premises such as in consumers home or place of work, traders are required to provide consumers with a written notice informing them that have a fourteen day cooling off period during which they can change their mind and cancel the contract. This notice should give the consumer specific information on how to cancel.

Civil and criminal law

Trading Standards Position

Civil enforcement action

Enterprise Act 2002— Enforcement Orders

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) infringements under Part 8 of the Enterprise Act 2002.



Currently, a number of bodies, including Trading Standards Services, 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 a term of imprisonment and/or a 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 the 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.

Failure to provide this notice to a consumer means that the cancellation period is extended to a maximum of twelve months and fourteen days after the cancellation notice is given. In addition, the trader is in breach of contract and the consumer may not be liable for any sums due.

In certain circumstances the consumer may request to have these cancellation rights waived i.e. for the contract to commence within the 14 day cooling off period. It is up to the consumer to initiate this and not the trader.

Civil and criminal law

Trading Standards Position

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 ground for reporting are that a 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 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 on suspicious activity.

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):

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.

Civil and criminal law

Trading Standards Position



In a second case, an elderly person attended a building society branch with a carer, and made several withdrawals up to the 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 has the effect of preventing further exploitation

sumers in the UK. Under the Act, consumers and businesses have clearer right and responsibilities, including:

- ◆ New rights for consumers to get a repair or a replacement of faulty digital content such as online film, games, music downloads and e-books
- ◆ An automatic 30-day time period to return faulty goods and get a full refund
- ◆ Consumers **have** a clear right to demand that substandard services are redone or failing that receive a price reduction
- ◆ Consumers **are** entitled to some money back after one failed repair of faulty goods (or one faulty replacement) even if more than 30 days have passed, rather than having to put up with repeated attempts to get a repair done
- ◆ Consumers **are** able to challenge terms and condition which are not fair or hidden in the small print.

The Consumer Rights Act 2015

The Consumer Rights Act 2015 was introduced in October 2015 and will have had a significant impact on the civil rights of con-

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 intrusions 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 proceeding before a court or to initiate such proceeding 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 adults' property and/or funds are at risk the Public Guardian can put the following safeguards in place.

Safeguards

- α. 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.
- β. In certain circumstances the adult's bank accounts may be frozen or income suspended until redirected for the benefit of the adult.
- χ. 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.
- δ. 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
 - Have their appointment revoked/terminated

If there is an indication of fraud or theft then the Office of 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



Useful Links

Mental Welfare Commission Good Practice Guide (Concerns with POA's & Money Matters)

<http://www.mwscot.org.uk/>

SCIE Report 49: Assessment: Financial Crime Against Vulnerable Adults (2011)

<http://www.scie.org.uk/publications/reports/report49.asp>

Adult Support & Protection in Scotland

<http://www.actagainstharm.org/>



Local Contacts

East Ayrshire

Trading Standards Service
Civic Centre South
John Dickie Street
Kilmarnock
KA1 1HW
Telephone: 01563 576602
Email: trading.standards@east-ayrshire.gov.uk
Facebook: www.facebook.com/eactradingstandards

Adult Support and Protection

H&SCPCustomerFirst@east-ayrshire.gov.uk

North Ayrshire

Trading Standards
North Ayrshire Council
Cunninghame House
Irvine
KA12 8EE
tradingstandards@north-ayrshire.gov.uk
Telephone: 01294 310100

Adult Support and Protection

adultprotection@north-ayrshire.gcsx.gov.uk

South Ayrshire

Trading Standards
5/7 River Terrace
Ayr
KA8 0BJ
Tel: 01292 616060
Fax: 01292 616061
Email: cabac@south-ayrshire.gov.uk

Adult Support and Protection

ASP@south-ayrshire.gov.uk

Police Scotland

If you are concerned about someone and believe that a crime may have been committed, telephone Police Scotland on **101** in the first instance.
In an emergency, phone **999**.

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

Phone: 01292 616102

Emails: ASP@south-ayrshire.gov.uk

“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”

East Ayrshire Adult Protection Committee

**Acting
against
harm**



NORTH AYRSHIRE



South Ayrshire
Adult Protection
Committee