



FACTSHEET NO. 1 - A Guide to Investigations



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

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

What is an Adult with Incapacity?

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

What could be considered misuse or abuse?

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

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

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

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

What does the Investigation Team do?

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

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

No action will be taken, as the Public Guardian is of the view that the adult's property and financial affairs are being suitably managed and safeguarded. Advice and guidance may be given if necessary to ensure continued protection of the adult's affairs. The situation may be monitored for a period of time to ensure that any issues have been resolved.

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

- Advice and guidance may be given to appropriate parties so that safeguards can be put in place to make sure the adult's property and financial affairs are suitably protected.
- In certain circumstances the adult's bank accounts may be frozen or income suspended until redirected for the benefit of the adult.
- A recommendation may be made for an appropriate body or person to consider making an application under the Act (for example, accessing funds or financial guardianship).
- An application may be made to the Sheriff seeking to have anyone acting under the Act, or under any other authority, to either be supervised or removed.
- If there is an indication of fraud or theft we may refer the matter to the police.

How long will an Investigation last?

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

Will an Investigation be confidential?

Yes. All information and/or evidence collected during an investigation will remain confidential and will not be disclosed to anyone except where required to do so by law. We will not disclose details of who raised the concern. All information received is used only by this office to form a view as to whether there is any risk to the adult's property or financial affairs.

At the end of the investigation you will only be advised of the outcome of the investigation i.e. that the adult's property and /or financial affairs are, or are not, at risk.

The Investigation has come to an end. Is that it?

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

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

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

What does the Investigation Team NOT do?

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

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

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

You may also wish to contact the Mental Welfare Commission for Scotland for guidance. Telephone: 0131 313 8777 or e-mail: enquiries@mwscot.org.uk

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

Further information is available from:

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

- Telephone: 01324 678300
- Email: opg@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk

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