**ADULTS WITH INCAPACITY**

(SCOTLAND) ACT 2000

**Investigations**: **A guide for staff working in the financial sector**

**Who is this leaflet for?**

**This is for financial sector staff that:**

1. **Wish to raise a concern about how the funds or property belonging to an incapable adult are being used, or**
2. **Have been asked by this office to provide information, bank statements or put safeguards on an incapable adult’s account.**

**GLOSSARY**

**Public Guardian:** An officer of the Scottish Courts and Tribunals Service. Sections 6 and 12 of Adults with Incapacity (Scotland) Act 2000 (referred to as the Act) give the Public Guardian powers to investigate concerns and take steps to safeguard the property and financial affairs of an adult with incapacity, where it appears they are at risk of misuse or abuse.

**Adult with incapacity:** A person aged 16 or older who lacks mental capacity [certified by a medical practitioner] to manage their property and or financial affairs.

**Risk**: When we talk about risk, we mean either current or future risk.

**Continuing Power of Attorney:** A legal document that gives legal authority to attorney/s to make decisions about the granter’s property, finances. The individual powers granted will be listed in the PoA document.

**Granter:** A person aged 16 or over that has granted a power of attorney, for advanced planning, while having capacity to do so.

**Subject:** the incapable adult who is the subject of an investigation.

**Complainant:** person raising a concern/making a referral to the Public Guardian.

**Making a referral**

Anyone can raise a concern about a **continuing attorney or about the actions of any other person** by completing our [referral form](https://www.publicguardian-scotland.gov.uk/docs/librariesprovider3/investigations/pdf-files/new-referral-form-april-2023pdf.pdf?sfvrsn=419b7a20_2). When making a referral please submit evidence supporting your concern. Concerns might include:

* The way in which an attorney, who has authority to manage an incapable adult’s finances or property, is using that authority.
* An incapable adult’s property or financial affairs appears to be at risk, perhaps because of the involvement of a third party who has no authority to manage the adult’s finances.
* When it appears that an incapable adult’s funds are not being used for their benefit, to meet their needs or in line with their wishes.

When we receive a referral, we will review the information provided to establish whether we have a remit to start an investigation. All information and/or evidence ingathered, the source of any concern, identity of any complainant, or detail of any concern received will not be disclosed to any third parties other than in accordance with the provisions of the Act.

Any information received by the Public Guardian is used only to form a view as to whether there is risk to an adult’s property or financial affairs.

**Statutory authority**

The Public Guardian has a duty to ensure that an incapable adult’s property or financial affairs are suitable safeguarded and not at risk from abuse or misuse. Prior to commencing investigative enquiries initial information will have been ingathered from a number of sources to determine whether the Public Guardian has a reason to investigate. Sections 6 and 12 of the Act provide the Public Guardian with authority to carry out specific functions and investigations.

* **Section 6** places a statutory obligation on the Public Guardian to investigate any circumstances made known in which the property or financial affairs of an incapable adult appear to be at risk and, if necessary, to intervene to safeguard the adult’s interests.
* **Section 12** grants authority to the Public Guardian to take such steps as seem to be necessary to safeguard the property or financial affairs of an incapable adult. Safeguards may include:

1. Providingadvice and guidance to appropriate parties so that safeguards can be put in place to protect the adult’s property and financial affairs
2. Placing restrictions on the adult’s bank accounts or suspending their income until it can be redirected for the benefit of the adult
3. Making an application to the Sheriff seeking to have a person acting under the Act or under any authority to be supervised, or ordered to submit accounts for audit by us, or have any or all of the powers or their appointment revoked.
4. Referring the matter to the police if there is an indication of criminality

* **Section 81A (as amended)** requires fund holders to provide records of accounts and any other information relating to those accounts as the Public Guardian may reasonably require.

**Requests**

Our requests for information, statements or safeguards to be applied will always be made in writing. Our letter will be clear about what we are asking a fund holder to do. An early response to requests or enquiries is vital as any delay may impact on our ability to protect against risk. You should seek the guidance of your own legal department or power of attorney section if you have any questions requiring information that you have been asked to provide to the Public Guardian.

**Contact us**

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The Office of the Public Guardian is part of the Scottish Courts and Tribunals Service.

We welcome any feedback or comment you may have on the content of this factsheet