

**Financial Abuse; Prevention and Cure.  
Joint working in Hampshire  
Guidance and Information**

**Produced by Hampshire Adult Services Department in  
conjunction with the range of agencies reflected within the  
document**

## **Financial Abuse; Prevention and Cure. Joint working in Hampshire**

In March 2000 the Department of Health produced mandatory guidance “No Secrets: Guidance on developing and implementing multiagency policies and procedures to protect vulnerable adults from abuse” This guidance requires all Local Authorities to have in place multi agency policies and procedures relating to the protection of vulnerable adults from abuse. This sits alongside a whole raft of expectations around abuse of vulnerable adults in relation to which the Local Authority Adult Services Departments must coordinate a response. In Hampshire all agencies work within procedures known as “Adult Protection: Policy and Procedures to ensure the Protection of Vulnerable Adults from Abuse”, June 2005. This can be found on the Hampshire County Council Adult Protection website at [www.hants.gov.uk/adult-services/adult-protection-policy](http://www.hants.gov.uk/adult-services/adult-protection-policy)

In June 2004 a House of Commons Health Select Committee on elder abuse underlined the importance of specific guidelines in the area of financial abuse. “No Secrets” defines financial abuse as follows: “includes theft, fraud, exploitation, and pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits”. Research by Professor Hilary Brown, Sophie Burns and Barry Wilson states “Research has shown that financial abuse is unlikely to occur in the absence of other forms of abuse.... In other words it is highly likely that a vulnerable person who is financially abused might also be physically or sexually abused, threatened, intimidated or otherwise psychologically abused and vice versa” (Brown, Burns and Wilson, 2002)

An analysis of calls to the Action on Elder Abuse helpline published in September 2004 showed that 20% of callers had concerns relating to financial abuse. This is the second highest category of reported abuse to the helpline after psychological abuse. Local statistics produced by Hampshire Adult Services Department also show that in the years 2003/4, 2004/5, 2005/6 and 2006/7 financial abuse represents the second highest category of reported abuse.

Financial abuse is then a significant issue and one which, in line with the House of Commons Health Select Committee recommendations, we in Hampshire County Council Adult Services Department have identified as a priority for specific attention and guidance. A local multiagency group has drawn up local guidance. This outlines the role and powers of a range of agencies which might be brought into play both to reduce opportunities for financial abuse and where it does occur, to intervene effectively.

The research by Professor Hilary Brown, Sophie Burns and Barry Wilson which is referred to above identifies improved responsiveness to warning signs/indicators of abuse and improved communications between agencies as crucial elements of successful intervention in this area of work. This guidance therefore incorporates the known signs/indicators of abuse. It identifies too the different roles and perspectives of all concerned agencies so that these can be drawn on appropriately where financial abuse is identified as a possibility. The research states “Shared working begins with alertness and sharing of concerns but extends to the shared responsibility for resolving cases by bringing to bear all the duties and powers available to each agency to secure the best outcomes for vulnerable people” This statement encompasses the rationale for this guidance on financial abuse of vulnerable adults so that in Hampshire we can work together effectively on this issue in the best interests of vulnerable adults.

In beginning to discuss the way in which the guidance could be produced it was quickly realised that the network of those who have an interest in financial abuse locally is very

broad. It includes: GPs; psychiatrists; psychologists; Community Psychiatric Nurses; Care Managers; Team Managers; Mental Health Practitioners; Commission for Social Care Inspection; Police; Care Home Managers; Office of the Public Guardian ;Court of Protection; Department of Work and Pensions; County Treasurers Department (Adult Services Financial Assessments, FAB officers; Income Section; Financial Procedures Officer); Banks;, Building Societies; Legal Professionals; Service Users and Carers. This list is not exhaustive. It is anticipated that this guidance will be a dynamic document, drawing in additional agencies/individuals as and when their potential contribution can be recognised and harnessed and encompassing new legislation and developments.

What follows in this document is a set of role profiles from a range of agencies who have responsibilities in the prevention of financial abuse and/or in intervening in these situations. The clear definition of these roles is the first step in an ongoing commitment to reduce opportunities for financial abuse of vulnerable adults and to respond effectively to it when it is uncovered. Continued commitment to dialogue and development amongst the agencies whose roles are represented here will be the key to ongoing effectiveness. A strategy to achieve this ongoing dialogue will be developed alongside this guidance.

## Role Profiles

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## **Role of Care Manager in situations of Financial Abuse**

Care Managers have a role at various stages and in various aspects relating to a Service User's finances. This will include:

- Advice and information on charging policy.
- Looking at the extent to which Service Users will be able to participate in a financial assessment
- Helping to identify who will be present during a financial assessment
- Identifying whether or not a Service User has mental capacity regarding financial decisions and/or referring to appropriate professionals to help determine capacity.
- Establishing, where possible, whether anyone is acting under a Power of Attorney or Lasting Power of Attorney on behalf of the Service User or has any other form of authority in relation to the latter's affairs.
- Where a person lacks capacity and no one is willing to act on their behalf, or risks are identified, applying to the Client Affairs Team for guidance and appropriate action. Consider the implications of the Mental Capacity Act and in particular whether the involvement of an Independent Mental Capacity Advocate (IMCA) is appropriate.
- Checking whether the Adult Services Department has any responsibility under Section 48 of the 1948 National Assistance Act in relation to protection of property
- Referring Service Users who have capacity to the Finance and Benefits Team (FAB) for financial assessment (and linked work with Department of Work and Pensions (DWP) regarding take up of welfare benefits).
- Ensuring that sufficient information and support are given to the FAB team to enable them to undertake this task.
- Identifying any "top up" to be made by the service user in relation to care home fees and who will be responsible for this and advising all parties to establish a written agreement of top up arrangements.
- Identifying Service User needs in the Care Plan and indicating how these will be met/resourced.
- Reviewing arrangements.

At any one of these stages there is opportunity for Care Managers to recognise the potential for financial abuse or to recognise that financial abuse and/or other abuse (as defined in the adult protection: policy and procedures for the protection of vulnerable adults) is happening.

Care Managers in carrying out the above roles may be liaising with one or more of:

- Finance and Benefits Team
- Provider Services
- Financial Assessments Team (Adult Services)
- Area Finance Team (Adult Services)
- Income Team (Adult Services)
- Debt Team (Adult Services)
- Client Affairs Team (Adult Services)
- Office of the Public Guardian (OPG), though this is less likely if this is a case that has already been referred to the Client Affairs Team for action.
- Department of Work and Pensions
- Medical colleagues
- Legal colleagues
- External financial organisations

- Commission for Social Care Inspection
- Police
- Voluntary Sector Organisations e.g. CAB/Advocacy
- IMCA Service
- Other Local Authority/District Council Departments

There will be others

Where financial abuse is suspected and/or substantiated communication between these parties is essential, including establishing legal powers and statutory duties/actions of all parties. The Care Manager will coordinate the appropriate sharing of information between individuals so that a strategy can be agreed within the framework of the Adult Protection: Policy and Procedures for the Protection of Vulnerable Adults from Abuse. This will be with the aim of either reducing the potential for abuse; preventing abuse and/or investigating/intervening in abuse.

## **Role of Hampshire Police in situations of Financial Abuse**

Hampshire Police will have a role in situations of financial abuse of a vulnerable adult in line with the Adult Protection: Policy and Procedures to ensure the Protection of Vulnerable Adults from Abuse.

The police have a great deal of expertise and experience in dealing with financial abuse. This may range from low level abuse e.g. where a carer is systematically stealing small amounts from a Vulnerable Adult to circumstances where an individual loses their entire wealth. The police have many and varied methods of investigating these crimes from covert surveillance to complex financial enquiries.

In many cases where the offences cannot be proved the intervention of Police can have a preventative effect.

The golden rule is that where financial abuse is suspected, then contact the police and involve them in a strategy discussion at the earliest opportunity. The best evidence is normally gathered in the early days of investigation. Should there be a number of “pre-police involvement” interviews of witnesses or suspects then this normally has the effect of muddying the waters or allowing evidence to be concealed or destroyed.

The Police role will primarily be in situations where it is suspected that a crime may have been committed. Potential crimes might include: theft; fraud; deception.

It is important to make contact with Hampshire Police at an early stage where there is suspicion of abuse, in order to make an early decision alongside the Police as to what their involvement might be.

Where it is clear that the potential for financial abuse is significant but that this cannot be proven, Police involvement may be very effective in deterring potential/actual abusers.

## **Role of Strategic Safeguarding Adults Manager in situations of financial abuse and of Area Safeguarding Adults Coordinators**

The role of the Strategic Safeguarding Manager is one of coordination for the protection of vulnerable adults from abuse. Department of Health mandatory guidance, “No Secrets” bestows this coordinating role on the local authority across all safeguarding/adult protection work.

This role is one of strategic development and ensuring that there is a commitment to working within the local multi-agency policy and procedures across agencies.

The drafting of joint guidelines around preventing and intervening in situations of financial abuse of vulnerable adults is undertaken as part of that role along with ensuring that there is ongoing dialogue across all parties to enhance protection in this aspect of our work.

The Strategic Safeguarding Adults Manager will facilitate communication on financial protection issues both within and outside of the Hampshire County Council Adults Services Department ensuring that both national and local developments / guidance are disseminated as appropriate.

The Strategic Safeguarding Adults Manager is also available to give advice on the adult protection policy and to pick up on issues as to its effectiveness in practice.

Area Safeguarding Coordinators will advise on practice locally and ensure consistency of approach across the Adult Services Department as well as facilitating effective joint working locally.

## **Role of Psychiatrist in situations of Financial abuse**

Psychiatrists may be in a position to pick up on situations of potential or actual financial abuse in the course of assessments/treatment.

Psychiatrists will have a role in relation to the assessment of individuals' mental capacity specifically around their ability to participate in financial decisions and actions/transactions.

Psychiatrists will have an important role particularly where the Court of Protection are involved and will need to have regard to the Mental Capacity Act.

The psychiatrist will work in partnership with other professionals (e.g. Health and Adult Services) who may have a role in the assessment of capacity. The Independent Mental Capacity Advocate may also be involved.

## **Role of the Commission for Social Care Inspection**

The Commission for Social Care Inspection (CSCI) regulates and inspects care homes and home care agencies in England for compliance with the Care Standards Act 2000, and the associated Care Home Regulations 2001 and Domiciliary Care Agencies Regulations 2002.

The regulations make it clear that care providers have a duty to establish robust financial management procedures. These procedures must safeguard people who use their services from being subject to any actions of financial mismanagement and abuse.

The regulations and other related information are set out in the Commission's best-practice bulletin, *In safe keeping - Supporting people who use regulated care services with their finances*, published in May 2007.

The bulletin states that people who use care services should be able to use and manage their money as and when they choose. Some people may need support with managing their financial interests, but this support should not override their right to access their money and to decide how they wish to spend it.

Care services must have procedures in place so that staff can help people with their finances appropriately. Staff also need to be aware of the signs of financial abuse and know how to respond appropriately.

CSCI recognises that procedures alone will not ensure that people's finances are within their control or managed with their best interests in mind. Any form of mismanagement, neglect or abuse is the result of human interactions and so cannot be completely eliminated. But good financial management and procedures to safeguard adults help to minimise the risk of abuse and increase the likelihood of abuse being detected.

If financial abuse does occur, multi-agency procedures to safeguard adults need to be put into action to make sure that the matter is investigated and those affected are protected from further harm. In February 2006, CSCI published a *Safeguarding adults protocol and guidance*, to clearly outline the Commission's role in working in partnership with other agencies to safeguard adults from abuse.

**The CSCI publication mentioned above, *In safe keeping - supporting people who use regulated care services with their finances*, can be viewed on the Commission's website at [www.csci.org.uk](http://www.csci.org.uk) or printed copies can be ordered via the website or by telephoning the publications order line on 0870 240 7535.**

The *Safeguarding adults protocol and guidance* document can be found on the website at: [www.csci.org.uk/Docs/safeguarding\\_adults\\_protocol.doc](http://www.csci.org.uk/Docs/safeguarding_adults_protocol.doc)

## **Role of Adult Placement Manager in situations of Financial Abuse**

Adult Placement carers are approved by the Hampshire Adult Placement Scheme to provide a home for adults many of whom are vulnerable, often because of a learning disability. Adult Placement Carers may identify that a person living with them or visiting them is suffering financial abuse and more rarely Adult Placement staff may pick up on financial abuse or potential for this within the Adult Placement. All concerns and complaints are investigated by the Adult Placement Scheme manager within the terms set out in the “Adult Protection: Policy and Procedures to ensure the Protection of Vulnerable Adults from Abuse” (June 2005).

Training in this area is included for all carers on induction and additionally in the year 2007-8 Adult Placement Carer training will be delivered to all existing carers on the “Management of Service Users’ Financial Affairs”. There is also an identified need for awareness training in financial matters for Service User’s supporters and so an information sheet will also be produced.

The annual review process also includes a financial audit .

The policy and procedure in “Management of People’s Money, Valuables and Financial Affairs” sets out good practice within Adult Placement and provides for the protection of the vulnerable adult and their affairs and the safeguarding of the Adult Placement carer from accusations of financial abuse. It balances the need for probity and protection with the need for the service user to access their money when required.

## **Direct Payments and Financial Abuse**

Direct Payments (DPs) involve the Adult Services Department giving eligible people money in lieu of services to address their social care needs. They may purchase services, employ individuals (PAs – personal assistants) or purchase items to address the needs agreed.

If this is ongoing, they are required to open a separate bank account for their funding for care and support.

Adult Services contracts with an organisation to provide a support worker service, advising and guiding individuals through this whole process (on aspects of being an employer, record keeping, recruitment etc, including adult protection issues). Individuals are encouraged to do this safely (eg: not receiving applications or interviewing applicants in their own home).

Adult Protection/Safeguarding information has been disseminated via a newsletter for DP users, including Hampshire leaflets.

Criminal Records Bureau checks are offered for PAs where DP users want this. This is compulsory where the DP is for the care of a child.

DP users are required to complete a quarterly return showing what they spend and this is monitored to ensure there is neither debt nor excess funds. At reviews (at least annual), how they are spending their money to address the needs assessed as eligible is discussed in more detail. These processes may help identify financial abuse. At these reviews regard should also be had to implications of the Mental Capacity Act and the service user's level of capacity and issues related to 'Best Interests' decisions.

Excess funds are agreed with the DP user then recouped.

If Adult Services are aware of specific risks in an individual situation, each case is dealt with uniquely. This has involved sharing information with the DP user or approaching the (other) individual who is the source of the risk. Individual conditions can be placed on the DP user. This may be in terms of keeping specified records / receipts or not using a specific PA.

## **Role of Department of Works and Pensions (DWP) in situations of Financial Abuse involving a Secretary of State appointee**

The Secretary of State for Work and Pensions will appoint a third party – known as an appointee - to act on behalf of a benefit customer who because of mental incapacity is unable to manage their benefit affairs. The appointee stands in the shoes of the customer for all benefit matters. (This should not be confused with the role of an agent. Customers use these when they have capacity but for some reason are unable to access their money. They arrange with their bank or post office for an agent to collect their money.)

The process of appointment involves visiting the customer, although this is not always necessary, and interviewing the prospective appointee. The DWP's Visiting Officer (VO) will assess the customer's capacity to manage their DWP income. The VO will have had specialist training but will not have a medical background. Where they have doubts they will seek further medical evidence from whatever source is best placed to answer relevant questions.

The suitability of the would-be appointee to honestly and conscientiously manage the customer's benefits in their best interests is determined by interview. At present DWP do not do any background checks eg CRB (this will change for certain cases when the Safeguarding Vulnerable Groups Act comes into force). The majority of appointees are friends or relatives and consequently there is a strong element of trust involved. Their role and responsibility is clearly explained to them and they sign form BF56 to acknowledge that they understand these. Once the Mental Capacity Act is in force this will include a reminder that it will be a criminal offence to wilfully neglect the customer. Appointees are given form BF57 as confirmation of their acceptance as an appointee.

The DWP does not undertake any post-appointment monitoring. Accordingly, whilst it may itself come across a case of potential or actual financial abuse, this would be unusual. What it does do is react to allegations from third parties. If the allegation is proved it will revoke the appointment. It will readily cooperate with LAs, adult protection officers, the Police and any other authority who comes forward with such allegations.

## **Role of Client Affairs Manager in situations of Financial Abuse**

The Client Affairs Team is concerned with the protection and management of the affairs of people (P) who lack capacity to do this for themselves. In accordance with the Mental Capacity Act 2005 it will seek to act in P's best interests. Best interests will be identified by working with P and those involved with P, especially the care manager, carer(s) relatives and friends. It is likely to be achieved by getting the balance right between empowering P and protecting P from financial abuse and financial loss.

The team provides a deputy decision making service of last resort, the Director of Adult Services being the named Deputy (formerly Receiver) appointed by the Court of Protection where P does not have a family, friends or professional representatives willing to act in this capacity or where it is felt, either by P or those in a position to advise (e.g. Care Manager, Court of Protection, Advocate...) that this would not be in P's best interests. Similarly, where P's income is limited to benefits income and/or retirement pension it will apply, again as a last resort, for the Director to become the Appointee and recipient of the income to which P is entitled. This requires completion of a form (BF56) which is then submitted to the Department of Work and Pensions (DWP), the team will provide an Appointeeship service of last resort.

The manager will seek to assist as far as possible in seeing that the opportunities for financial abuse of P are limited by ensuring that those involved with P's affairs are acting properly and in accordance with current legislation. Where suspicions are raised of financial abuse the manager may contact the Office of the Public Guardian (OPG), Court of Protection (COP) and the various other partners who have a role to play in protecting and enabling P's estate to be used to maximise P's wellbeing.

The manager and his team are available to give advice on the best ways of ensuring this objective is met but in doing so they will be dependant upon the information given to them by the people seeking this advice.

Raising awareness of what P can do whilst *compos mentis* to safeguard those affairs should mental disorder intervene, resulting in loss of capacity, is ongoing in dealings with key personnel e.g. care managers.

A large amount of time is spent in monitoring and investigating all aspects of P's financial affairs which may reveal financial abuse.

## **Role of Financial Assessments and Benefits Team (FAB) Team, Residential Assessments and SS Income Team in situations of Financial Abuse**

The FAB Team will process Referrals made by Care Managers for Financial Assessments for both Residential and Non Residential care services – any indication made by the Care Manager of suspected financial abuse noted on the referral, emailed or verbalised to FAB will be dealt with in line with the FAB Suspected Financial Abuse procedure. Information gathered at the visit will be used solely for the purpose of completing a Financial Assessment – in line with Data Protection. However, should the FAB Visiting Officer identify any concerns not previously noted by the Care Manager financial or otherwise these will be identified to the Care Manager as per procedure .

FAB visits will not be completed for any other purpose than to complete a Financial Assessment – visits will not be carried out under the guise of completing a Financial Assessment with the purpose of gathering information/inspecting finances – this is in direct contravention of Data Protection.

The Care Manager will have had the benefit of meeting the client and forming an impression of whether they are capable of managing their own affairs or of appointing someone else to act for them. If there is no person available to act for the Client then once approval has been given to the Care Manager by Client Affairs Team to take on Corporate Appointeeship the FAB Team may arrange a Joint Visit with the Care Manager to complete a DWP Appointeeship application (BF56).

Residential Financial Assessments Team may be in a position to pick up on situations of potential or actual financial abuse in discussions with the Care Manager and with reference to documentary evidence of financial transactions etc. They may also have reason to suspect financial abuse in dealing with a service user's carers, family or other representatives. Where any concerns are identified these will be notified to the Care Manager to progress in line with the Residential Assessments Team Suspected Financial Abuse procedure.

The Income Team in its monitoring of a service user's account, with regard to payment for services, will be aware of accruing debts. From this they may infer that the person's affairs are currently not being managed effectively. On enquiring into the situation they may discover evidence of financial abuse or the potential for this. Where any concerns are identified these will be notified to the Care Manager to progress in line with the SS Income Team Suspected Financial Abuse procedure.

## **Roles of the Office of the Public Guardian (OPG) and the Court of Protection in situations of financial abuse**

The OPG plays an important part in helping to minimise the risks to vulnerable adults of financial abuse. Where there is evidence of lack of capacity to manage property and affairs the Court of Protection may appoint a deputy decision maker (Deputy) to manage these. Previously the person appointed was known as a Receiver. The OPG will be responsible for regulating the Deputies.

The OPG is responsible for keeping a register of Lasting Powers of Attorney (made from 1<sup>st</sup> October 2007) and of registered Enduring Powers of Attorney (made on or before 30 September 2007). The register can be accessed and the OPG will be happy to check the Register where there are concerns around the affairs of the vulnerable adult and the conduct of their affairs by the Attorney(s). The Court of Protection has powers to enquire into the management of an individual's affairs by their Attorney(s) and to cancel the power and appoint a Deputy instead.

Where it is in an individual's best interests eg. where financial abuse is suspected the Court may give Directions to Investigate and Report. This would be given to a named third party, enabling them to look into the financial affairs of the person under the Court's jurisdiction. In reporting back the findings to the OPG the individual may seek further Directions to safeguard the individual's resources. The results of the investigation may necessitate police enquiries/action as well as a referral to the OPG's Investigations Unit.

The Deputy appointed by the Court of Protection will be subject to a supervision regime which in cases where a close level of supervision is required will require the submission of a financial statement showing how the individual's finances have been managed. The OPG is responsible for the supervision of deputies and for enquiring into any irregularities.

The Court may direct a visit to the client under its jurisdiction by one of its visitors (previously known as a Lord Chancellor's Visitor)— a general visitor, a medical visitor or a legal visitor and report back to it.

The roles of the OPG and the COP have changed since the full implementation of the Mental Capacity Act on 1 October 2007. The COP's powers now extend to health and welfare issues, in addition to its jurisdiction over financial matters.

## **Role of Financial Procedures in situations of Financial Abuse (HCC Adult Services)**

Robust internal financial procedures governing the way in which service users monies are handled within the organisation will limit the possibilities for financial abuse. This will need to be balanced against the accessibility of the service users personal moneys for their use and benefit. Where there is evidence that procedures are inadequate or where procedures are being flouted this may reveal financial abuse or the potential for it occurring.

## **Role of The British Banking Association (BBA) in situations of Financial Abuse**

The BBA is the trade association for all banks providing services to personal customers in the UK.

The BBA along with the Building Societies Association and APACS (credit cards) operates the Banking Code and together these three organisations are responsible for writing the code and reviewing its contents on a regular basis. Compliance with the Code is monitored by the Banking Code Standards Board. All three organisations are governed by rules laid down by the Financial Services Authority (FSA).

The Code sets standards of good banking practice for financial institutions to follow.

The key promise made in the code is that banks will act fairly and reasonably in all dealings with personal customers. More information can be obtained from <http://www.bankingcode.org.uk/>

The BBA provides an advice service to its members and acts as a point of reference for banks when dealing with legislation. For example the Association provides advice on money laundering, Data Protection and the Mental Capacity Act.

## **Role of a Local Bank in situations of suspected Financial Abuse**

Local banks can play an important role in helping to prevent financial abuse to customers at the hands of unscrupulous individuals. Bank staff may get to know a customer well because of her/his regular visits to the local branch. Staff may therefore form a view of the level of vulnerability of a particular customer. They may for instance be aware of a customer's increasing forgetfulness which might be manifested by the person visiting the bank increasingly to withdraw money (forgetting that they have very recently made a similar withdrawal). Staff may therefore, when aware of such visits, feel it to be in their customer's best interests to remind the customer of this. In cases where a member of the bank's staff feels that the person has lost capacity to manage their bank account they will wish to follow the Bank's procedures. This may involve taking advice from the Bank's legal department.

Whilst the Mental Capacity Act is clear that one must assume that an individual has mental capacity, unless it can be demonstrated otherwise, staff would no doubt wish to share their concerns with their manager in order that appropriate action can be taken where possible to safeguard the customer's interests. This may include contacting the Adult Services Department of Hampshire County Council because of concerns around the vulnerability of the customer. A call to the Office of the Public Guardian for advice may also be felt to be appropriate, depending upon the circumstances. Similarly, the involvement of the police might be necessary where staff have suspicions that a customer is being financially abused.

## Role of Trading Standards

The Trading Standards service has the task of enforcing the Trading Standards Law and Regulations. Officers carry out regular inspections of trade premises and take action against traders who disregard the laws.

In relation to issues of Adult Protection, Trading Standards have a role in prevention and investigation of doorstep crime. Doorstep criminals are well-known to target the elderly and vulnerable. They will cold call a person and persuade them that emergency work to the property is essential e.g. repairs to the roof, guttering, driveway or garden. The price quoted seems reasonable and the victim agrees. The work may be done but to a poor standard. Sometimes it is not done at all. The trader demands the money, often many times more than that quoted verbally. The victim is intimidated into paying and may be taken to the bank or building society to get the money. Repeat victimization is known to happen with the trader going back again and again to the same premises demanding more and more money. Cases in Hampshire have revealed individuals losing up to £50,000. In some cases the victim has no idea why they are paying but is too frightened to tell anyone.

Hampshire Trading Standards service has a Quick Response Team that will go out immediately, if a trader is on the premises or is going to return, and deal with the trader. They can be contacted on 01962 833666. Alternatively if you suspect that this may be on-going with a particular individual, contact the community projects team on 01962 833625 or e-mail [doorstep.crime@hants.gov.uk](mailto:doorstep.crime@hants.gov.uk). Both these services are Monday to Friday 9am to 5pm but if the case is urgent contact Hampshire Police who will deal with the immediate incident and pass on as necessary.

Trading Standards are also keen to reduce the problem by warning about the dangers of agreeing to work at the door. They give talks to older peoples groups and distribute booklets and door-stickers. Again to access these services contact the community projects team on 01962 833625 or e-mail [doorstep.crime@hants.gov.uk](mailto:doorstep.crime@hants.gov.uk).

Trading Standards also run a scheme of approved traders which can be found on [www.buywithconfidence.gov.uk](http://www.buywithconfidence.gov.uk) or phone 08454 040506. Traders on this list are thoroughly checked out and can be reliably recommended.

Portsmouth Trading Standards can be contacted through the City Help Desk on 02392 841295, via email –

## **Role of Solicitor (in House) in situations of Financial Abuse**

In cases of financial abuse where legal advice is required, the Legal Practice should be notified at an early stage.

The Legal Practice is in a position to advise the Adult Services Department of the legal processes available to protect/safeguard an individual from financial abuse.

In cases where the Legal Practice obtains information which indicates possible financial abuse the lawyer will contact the care manager to discuss how to proceed.

If the Legal Practice has already been instructed in relation to a matter, and financial abuse is suspected, that matter may be stayed pending the outcome of the investigation into the alleged financial abuse.

Legal remedies in such situations are drawn from numerous pieces of legislation depending on the particular circumstances of the individual case.

## **Role of Solicitor in Private Practice in situations of Financial Abuse**

The solicitor, depending upon the extent of their involvement in a particular case, may be in a position to recognise situations involving potential or actual financial abuse. A solicitor, specialising in this area of law, will usually have some experience of assessing a person's ability to give instructions to prepare Wills and Powers of Attorney and that person's ability to understand what is being asked of them.

If there is any doubt about a person's mental capacity, reference will be made to the provisions of the Mental Capacity Act in obtaining an assessment of mental capacity in relation to the specific matter in question.

The solicitor should be in no doubt as to whom the client is, irrespective of who initially contacts the solicitor. They will advise that client independently on the legislation and procedures designed to protect and safeguard individuals from financial abuse and if necessary, how to seek redress under the law.

## **Complaints about a solicitor**

The **Consumer Complaints Service** is the part of the Law Society which helps anyone who has a problem with their solicitor.

This service deals with:

- Complaints from clients about poor service
- Applications for remuneration certificates (where the service checks if the solicitor's bill is fair)
- Reports about professional misconduct by solicitors

The helpline number for this service is: **0845 608 6565**. Lines are open from 9 to 5 Monday to Friday.

## **Role of Advocates in Financial Abuse**

The following is taken from the multiagency policy and procedures for the protection of vulnerable adults from abuse.

A citizen advocate can be particularly valuable in protecting against financial abuse in terms of “arming” the individual with information on which to make choices or take actions. Equally group/self advocacy groups can support individuals with the skills and knowledge they will require to protect themselves against financial abuse.

The multiagency policy and procedures says of advocacy in the context of all types of abuse: In some cases it will be necessary to appoint an independent advocate and sometimes a legal advocate, to represent the interests of those subject to abuse, or those against whom a complaint or allegation has been made. In such cases, all agencies should determine how the services of advocates can be assessed, and the role they should take. Department of Health (1999) ‘No Secrets’, HMSO, p.30

Advocacy has been defined as the ‘active support of a cause or course of action. (Collins English Dictionary, 1995). There are many types of advocacy including legal, independent, group and informal advocacy, to name just a few. Advocacy can help clients in many ways, including:

- Listening to the client
- Hearing their views without making any judgements or assumptions
- Respecting and valuing their clients views
- Empowering clients, by improving their self-esteem and self confidence
- Bridging the gap between clients and those they wish to communicate with
- Supporting this communication and clarifying communication
- Informing clients of their rights, as well as helping them to understand them
- Identify which resources and services may meet their needs
- Supporting clients in making these choices
- Maintaining confidentiality at all times, unless there is a risk of harm to children or others

An advocate can play a crucial role within the adult protection policy, by providing an independent and impartial environment, enabling the client to explore the options that are available to them. An effective advocate will be able to gather the relevant factual information and then to gain the client’s agreement as to how to proceed. By discussing the client’s risks and choices with them, the client should then feel both empowered to voice their views, and to feel supported in expressing these to the relevant statutory agencies.

Through the use of an advocate, the relevant agencies should be able to develop strategies to promote the safety of the client, which, having been developed by the client themselves are more likely to be effective. Advocacy would provide an indispensable measure to balance against over protection and paternalism, by ensuring that the views and wishes of the client are heard and respected.

Independent Mental Capacity Advocates (IMCA) have been appointed to work with certain adults lacking capacity since 01/07/07 and the Government required local councils to ensure that a service was in place for this purpose at that date. Each Local authority is now aware of the extent of funding being made available to it for the costs of commissioning this service. It is envisaged that the IMCAs will have an important role in

partnership working dedicated to the prevention of financial abuse. In Hampshire discretionary powers to allocate an IMCA in situations of abuse of a vulnerable adult are in operation.

## **Role of the Court of Protection Visitor in situations of Financial Abuse**

The Office of the Public Guardian administers the Court of Protection Visitors service. A visit may be commissioned by the Court of Protection or by the Public Guardian as part of the supervision of Court appointed Deputies. A visit may also be commissioned where there are concerns about the actions of an attorney appointed under an Enduring Power of Attorney or Lasting Power of Attorney.

Deputies who have been assessed by the Public Guardian to require a close level of supervision are visited routinely at least once a year by the Court of Protection's General Visitors. In other cases, a visit may be commissioned where concerns are reported to the OPG about a Deputy or Attorney. These visits are normally carried out within 8 weeks and the Visitor will report back to the OPG. The report will include details of the circumstances in which the person is living, their condition, both mental and physical, their care needs and how they are being met, and their financial needs and how they are being met. If the Visitor finds any evidence of abuse or potential abuse (financial or otherwise), these are reported back to the OPG and thence, as necessary, to the Court of Protection.

Prior to lodging the report the Visitor may involve the Deputy, Attorney or other people and agencies who have an interest in the care and welfare of the individual. Contact with others may also be sought by OPG staff as part of the supervision of Deputies. In cases where there are concerns a repeat visit will be commissioned within a specified timescale, depending on the needs of the case.

The Court of Protection can authorise special visits from time to time to report on specific issues. These visits are carried out within six weeks.

# Appendix

## **Appendix I**

### **Definitions of abuse**

The following is an extract from the Adult protection: Policy and Procedures to ensure the Protection of Vulnerable Adults from Abuse, July 2005.

This defines abuse in general terms and the different types of abuse separately including financial abuse which is shown at section 2.1.5.

## DEFINING ABUSE

### 2.1 Types of Abuse

What follows in this section is based on the guidance given in “No Secrets” to assist in defining the term “vulnerable adult” and in defining what constitutes abuse.

Definition is crucial. Agreement on what constitutes abuse/a vulnerable adult must be reached in order that all agencies are clear as to which situations require that this policy and procedure be followed. The importance of revisiting definition throughout the assessment/investigation process cannot be overstated. This is important in order to achieve clarity about the purpose of intervention, focussed intervention by the most appropriate individuals/professionals and clarity about the level of risk in a situation.

“No Secrets” definition of abuse:

**“abuse may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it”.**

A definition of significant harm in a consultation paper issued by the Lord Chancellor's Department states:

**“harm’ should be taken to include not only ill-treatment (including sexual abuse and forms of ill-treatment which are not physical), but also ‘the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development’. These latter categories may be very important to an individual's ability to recover from an illness or have the best possible quality of life”.** (Making Decisions, 1999).

The Centre for Policy on Ageing states that:

**“Abuse is the harming of another individual usually by someone who is in a position of power, trust or authority over that individual. The harm may be physical, psychological or emotional or it may be directed at exploiting the vulnerability of the victim in more subtle ways (for example, through denying access to people who can come to the aid of the victim, or through misuse or misappropriation of his or her financial resources). The threat or use of punishment is also a form of abuse. Abuse may happen as a ‘one-off’ occurrence or it may become a regular feature of a relationship. Other people may be unaware that it is happening and for this reason it may be difficult to detect. In many cases, it is a criminal offence.** (Centre for Policy on Ageing, 1996).

Consensus has emerged identifying the following main types of abuse. These appear in “No Secrets”.

#### 2.1.1 Physical Abuse

Resulting from acts of commission or omission on the part of others and causing pain, injury or impairment. Including hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions. Building on this definition of

physical abuse within “No Secrets”, it can be helpful to consider the following different categories of physical abuse:-

**a. Bodily Assaults**

Resulting in injuries such as burns, bruises, abrasions, fractures, dislocations, welts, wounds, rashes, pressure sores or marks of physical restraint.

**b. Bodily Impairment**

Manifested in malnutrition, dehydration, emaciation, poor hygiene, drug or alcohol addiction, sleep deprivation, failure to thrive, unexplained fatigue, hypo/hyperthermia, or improper ventilation.

**c. Medical/Healthcare Maltreatment**

Inappropriate medication, over/under medication, inappropriate administration of medication (method). Provision of health care may be unavailable to an excessive degree, or irregular, improper, inadequate or duplicated in some way.

**2.1.2 Sexual Abuse**

Including rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent or was pressured into consenting. Sexual abuse might also include exposure to pornographic materials, being made to witness sexual acts and encompasses sexual harassment and non-contact abuse.

**2.1.3 Psychological/Emotional Abuse**

Including emotional abuse, threats of harm, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks. It might include the following, in addition to this definition from “No Secrets”: playing on someone's emotions to make them afraid, uneasy or unnecessarily dependent. This might include bullying, shouting, threats of harm or abandonment, intimidation, persistent ignoring, isolation or withdrawal from social contact or supportive networks, emotional blackmail, undermining, ridiculing, coercion, verbal or racial abuse, deprivation of contact, blaming or controlling.

**2.1.4 Neglect, Acts of Omission and Poor Professional Practice.**

Including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating.

**2.1.5 Financial or material Abuse**

Includes theft, fraud exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits

**2.1.6 Discriminatory Abuse**

including racist, sexist, that based on a person's disability, and other forms of harassment, slurs or similar treatment.

Multiple forms of abuse may occur in an ongoing relationship or an abusive service setting to one person, or to more than one person at a time, making it important to look beyond single incidents or breaches in standards, to underlying dynamics and patterns of harm. Any or all of these types of abuse may be perpetrated as the result or deliberate intent and targeting of vulnerable people, negligence or ignorance.

## **Appendix 2**

### Signs and Symptoms of abuse

The following section is an extract from the Adult Protection: Policy and Procedures to ensure the Protection of Vulnerable Adults from Abuse, June 2005.

It contains signs and symptoms of all types of abuse rather than simply those relating to financial abuse. These have been included because research has shown that financial abuse often goes hand in hand with other types of abuse. It is therefore essential that all those working in situations where financial abuse is a possibility are aware of the signs and symptoms relating to all abuses.

## **10.6 POSSIBLE INDICATORS OF/CAUSAL FACTORS IN ABUSIVE SITUATIONS**

The following are some of the common factors which may signal that there is a danger of abuse occurring/having occurred. They do not automatically indicate a potentially abusive situation but **may** merit assessment:

### **PREDISPOSING FACTORS WHICH MAY LEAD TO ABUSE:**

- Increased dependency of the individual, leading to a high degree of care being required, e.g. moving and handling, toileting, assistance with personal tasks.
- Multiple dependency within the family, e.g. young mother having to care for an older relative.
- Multi-generational family structure where there are conflicts of personal interests and personal loyalties.
- Where roles have been reversed, where for example, a domineering parent becomes dependent.
- History of abuse within the family, e.g. marital violence, abuse of children, where family relationships over the years have been poor or where family violence is the norm.
- Overcrowding, poor housing conditions.
- Financial difficulties - low income, debt arrears.
- Adult has difficult behaviour which causes high levels of stress for other people, e.g. had hit/abused others, disturbs others at night, exhibits odd or embarrassing behaviour, e.g. faecal smearing, is rejecting/ungrateful.
- Other members of the older person's household may suffer from ill-health (physical or mental) or there may be alcohol or drug dependency.
- There may be personal problems within the person's household, e.g. marital, financial.
- Carers may, due to the demands of caring, be isolated and may lack the necessary practical and emotional support.
- Carers may not have the necessary understanding of the person's condition to enable them to offer appropriate and effective care.
- Not all carers care willingly nor are they all valued for the care they give. Feelings of guilt, resentment and anger can be contributory factors in abuse situations.

### **PREPISPOSING FACTORS WHICH MAY LEAD TO ABUSE IN INSTITUTIONAL SETTINGS:-**

#### **Context**

- Working alone on a one to one basis with a vulnerable adult
- Poor physical conditions in which caring takes place
- Overcrowding of the care setting
- Few visitors/minimal outside contacts]
- Uncertainty about the future of the service
- Senior staff who have been in post for a long time and have a high level of authority and entrenched views

- Lack of effective monitoring by senior staff

### **Employment Practice**

- Inadequate recruitment/selection process
- Inadequate or no induction
- Poor or no training
- Poor or no support, supervision. Appraisal or development
- Poor pay and conditions of employment
- Undervaluing of staff/volunteers – low morale

### **Practice**

- Failure to develop a clear philosophy/purpose
- Inadequate practice guidance and standards
- Under resourcing – staff/volunteers, equipment, provisions
- Working under pressure
- Institutional practices that cause users to be treated en masse
- Authoritarian or “laissez faire” regime
- Dull or depressing lifestyle for users
- Major changes in purpose or task

### **Individual staff/volunteer carer**

- Lack of interest and commitment
- Lack of knowledge, understanding or concern for the service users
- Personal problems/stress, including health problems
- Inability to relate to a particular service user

### **KNOWN REACTIONS OF VICTIMS OF ABUSE:**

- Denial (often forthright) that anything is amiss, with an accompanying emphasis that things ‘could hardly be better’
- Resignation, stoicism, and, sometimes, an acceptance of incidents as being part of being old/vulnerable
- Withdrawal from activity, communication and participation
- Marked change of behaviour and inappropriate attachments. Fear, frequently combined with depression and a sense of hopelessness
- Mental confusion
- Anger and physical/verbal outbursts
- Seeking attention/protection, often from numerous sources (some of which can be unlikely). This might include the condition Munchausen Syndrome by Proxy

The following are lists of known indicators of abuse. The indicators do not automatically show abuse to be occurring but a combination of indicators emerging might well be a cause for concern and warrant further assessment.

Remember that what is abusive for one person may not be for another. Anyone has the potential to be an abuser.

## **I SIGNS OF PHYSICAL ABUSE**

### **Physical Signs**

Considerable caution should be exercised in a diagnosis of abuse in this category because some ageing processes can cause changes which are hard to distinguish from some aspects of physical assault e.g. skin bruising can occur very easily due to blood vessels becoming very fragile.

- A history of unexplained falls or minor injuries.
- Bruising
  - a) In well protected areas, e.g. inside of thigh, inside of upper arm
  - b) Bilaterally on soft parts of the body - not over bony prominences
  - c) Clustered as from repeated striking
- Finger-marks
- Burns of unusual location or type
- Injuries/bruises found at different states of healing or such that it is difficult to suggest an accidental cause
- Injury shape similar to an object
- Injuries to head/face/scalp
- History of General Practitioners or agency hopping or episodes, the accounts of which vary with the time or are inconsistent with the physical evidence, or a reluctance to seek GP/services help.
- Weight loss due to malnutrition
- Rapid weight gain/"gorging"
- Subdued personality in presence of carer
- Ulcers, bed sores and being left in wet clothing
- Drowsiness due to too much medication
- Lack of medication - causing recurring crises/hospital admissions

## **II SIGNS OF NEGLECT**

- Physical condition of the vulnerable adult is poor, e.g. bed sores, unwashed, ulcers
- Clothing in poor condition; e.g. unclean, wet, ragged
- Inadequate diet
- Untreated injuries or medical problems
- Inconsistent or reluctant contact with health or social care agencies
- Failure to engage in social interaction
- Malnutrition when not living alone
- Inadequate heating
- Failure to give prescribed medication
- Poor personal hygiene

### **III SOCIAL AND EMOTIONAL SIGNS:**

- Isolation, e.g. older person may be confined to one room and denied social contact
- Unkempt, unwashed, smell of urine/faeces (Here extremes are being referred to)
- Over meticulous (extremes are being referred to)
- Inappropriately/improperly dressed
- Individual may be withdrawn, agitated, anxious, not wanting to be touched
- Change in appetite leading to unusual weight gain/loss
- insomnia/sleep deprivation or need for excessive sleep

#### **Other reactions may include:**

- Tearfulness
- Unexplained paranoia
- Low self-esteem
- Excessive fears
- Ambivalence
- Confusion
- Agitation

### **IV SIGNS OF FINANCIAL ABUSE:**

- Unexplained or sudden inability to pay bills
- Unexplained or sudden withdrawal of money from accounts
- Disparity between assets and satisfactory living conditions
- Lack of receptivity by older person or relative to any necessary assistance requiring expenditure, when finances are not a problem. (The natural thriftiness of some people should be borne in mind).
- Extraordinary interest by family members and other people in the vulnerable person's assets.

### **V SIGNS OF SEXUAL ABUSE**

It is not possible to give one complete list of signals and symptoms of sexual abuse. Different people react in different ways to stress and trauma. Some people will tell you directly, some indirectly.

#### **Disclosure**

In many instances, abuse comes to light because the person tells someone and is believed.

#### **Partial Disclosure**

For example, the person uses repeated phrases like, "It's a secret", or "Shut up, or I'll hurt you".

### **Medical/Physical Problems**

Such as genital infections and discharges, lacerations to the genital area, bruising (e.g. finger marks on the upper arms), scratching on the upper thighs, "love bites", or difficulty in walking or sitting. Pregnancy may also be a sign, especially in a non-consenting adult.

### **Disturbed Behaviour**

For example, depression; sudden withdrawal from activities, loss of previous skills; loss of appetite and/or difficulty in keeping food down; sleeplessness or nightmares; inappropriately seductive behaviour; repeated or excessive masturbation; self-injury; showing fear or being aggressive to one particular person.

### **Behaviour of Others**

The way another person (e.g. colleagues, volunteer or family member) behaves or talks to or touches the person.

### **Circumstances**

For example, two service users are found in the toilet area, one in a distressed state, or finding a person's underwear torn or bloodstained.

One, or a combination of the above may constitute a 'referral' or 'disclosure'. Often it is a combination of factors present which prompt action.

(Extract from Aldershot Social Services "Vulnerable Adults and Abuse" – Draft Guidelines).

## **VI SIGNS OF DISCRIMINATORY ABUSE**

- Lack of respect shown to an individual
- Signs of a sub-standard service offered to an individual
- Repeated exclusion from rights afforded to citizens such as health, education, employment, criminal justice and civic status

## **VII SIGNS OF INSTIUTIONAL ABUSE**

- Inappropriate or poor care
- Misuse of medication
- Inappropriate use of restraint
- Sensory deprivation, e.g. denial of use of spectacles or hearing aid
- Lack of respect shown to the vulnerable adult
- Denial of visitors or phone calls
- Restricted access to toilet or bathing facilities
- Restricted access to appropriate medical or social care
- Failure to ensure appropriate privacy or personal dignity
- Lack of flexibility and choice, e.g. mealtimes and bedtimes, choice of food
- Lack of personal clothing or possessions
- Lack of adequate procedures, e.g. for medication, financial management
- Controlling relationships between staff and service users
- Poor professional practice

## **OTHER SUSPICIOUS SIGNS AND SYMPTOMS**

- If the dependant vulnerable adult is brought to a hospital in an emergency by someone other than the care giver, or is found alone at home in a situation of serious but avoidable risk.

- If there is a prolonged interval between injury/illness and presentation for medical care, injuries are found at different stages of healing, or such that it is difficult to suggest an accidental cause (e.g. finger mark bruising, cigarette burns, rope-marks on wrists, ankles or neck, or bruising to the inside of upper arms or inside of upper legs)
- If the dependant vulnerable adult or relevant others are known to the police or welfare agencies in circumstances indicating possible risk to the life, health or well-being of the older person.
- If there is a history of unexplained injuries, "doctor or agency hopping" or episodes, the accounts of which vary over time or are inconsistent with physical evidence.
- If examination of medication indicates that such medication is not being administered as prescribed.
- If checks with other agencies reveal concerns and/or reports of steadily deteriorating care (e.g. unkempt hair, lost glasses and teeth, lack of care of incontinence, or incidents where abuse of the vulnerable adult was suspected).

## Appendix 3

### MENTAL CAPACITY ACT 2005

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who may be unable to make certain decisions. It provides a structure for the assessment of mental capacity and a framework for “best interests” decision making for when people lack capacity. It enables people to plan ahead for a time when they may lose capacity.

The whole Act is underpinned by a set of five key principles, including:

- A presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- The right for individuals to be supported to make their own decisions – people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests – anything done for or on behalf of people without capacity should be in their best interests and ...
- Should be the least restrictive of their basic rights and freedoms.

Key sources of guidance are the Mental Capacity Act 2005, the Code of Practice and local guidance such as the Hampshire Care Management Practice Manual.

#### ***Protection from abuse:***

On 1.4.07 two new criminal offences came into force, an offence of ill treatment and of neglect of a person who lacks capacity.

People who need support to make decisions are vulnerable to abuse and exploitation, simply because they are reliant on help and support given by others. While the vast majority of carers and others involved in the care of vulnerable people are entirely trustworthy, everyone must be vigilant in watching for signs of abuse and taking swift action to prevent or stop it.

#### **Supporting people to make their own decisions:**

A key principle of the Mental Capacity Act 2005 (MCA) is that every adult has the right to make their own decisions and is assumed to have capacity to do so unless it is proved otherwise. Some people may need help or support to be able to understand the decision they are being asked to make, to know how to make a choice or to be able to communicate, but the need for help and support does not remove their right to make their own decisions.

The MCA also confirms that it is essential that any assessment of a person’s mental capacity

is only made in relation to the specific decision or proposed action in question at that particular time. It is not appropriate to make a global assumption about someone's capacity, as they may be capable of making a straight forward decision but less able to make a more complex one.

A range of professionals have a key role to play in finding ways of helping people who need support to understand what decisions need to be made and why, what the effects might be and whether there are any alternatives. Through their work, they will be in a good position to know the most effective way to communicate with the people they care for and how to explain things in a way they can understand. They may also know of other sources of help and advice which will enable individuals to reach a decision and express a choice. It is important to involve people who are close to the person, such as relatives and carers, who are likely to know the best way to communicate with them, what their likes and dislikes are and how these may be relevant to the decision in question.

A difficult balance has to be achieved between helping people who need support to maximise their independence and autonomy, and protecting them from harm. The desire to protect must not stop them from making decisions they are able to, even if others disagree with the decision they have made. The Mental Capacity Act 2005 requires that when someone makes an "unwise" or eccentric decision, it should not be assumed that they necessarily lack mental capacity.

It may be helpful for the person who needs support to have assistance from an independent advocate who is independent of the family or other agencies involved in the person's care. An independent advocate is someone who is unpaid and acts on a voluntary basis. They could help the person express their wishes and aspirations and make real choices. Additionally some service users will be entitled to access an Independent Mental Capacity Advocate (IMCA) if they lack capacity and are "un-befriended" having no friends or family who are willing or able to represent their interests. To be eligible they will additionally be facing a life changing decision in relation to serious medical treatment or a long term change of accommodation. This service will also be accessible for certain adult protection situations where there is perceived to be a high risk to the service user and the case involves a conflict of interest. For more details of the IMCA eligibility and referral process please see local guidance . In Hampshire this is outlined in chapter 11 of the Care Management Practice Manual.

### **The role of professionals:**

Professionals have a role to play in helping and supporting people to make their own decisions. For example, social workers, residential or home care workers, nurses, health visitors, may develop a trusting relationship with their clients which may enable them to find better ways of communicating with them.

Very few people, even those with severe disabilities and high support needs, are totally unable to make any decisions. For example, a person with severe learning difficulties unable to use speech may indicate by their behaviour whether they are happy to take part in a game or other activity. An older person with dementia may be quite capable of collecting and spending their weekly pension, but may be unable to deal with more complex financial matters, like selling a property or paying residential care fees.

Social care professionals may therefore be involved in:

- Providing information to service users in ways they can understand. Outlining options which may be available to them; decisions which need to be made; and other sources of help or advice.
- Assisting with communication or calling in other expert professionals, such as speech or occupational therapists, where required.
- Providing support for carers or other family members. In particular, helping them to recognise when the person being cared for is capable of making their own decisions and where expert help may assist them to achieve this.
- Giving an opinion of the social functioning of the person being cared for and how this might affect their capacity to make a particular decision.
- Helping to determine what may be in the best interests of the person who lacks capacity.
- Protecting a vulnerable person from abuse or exploitation.

### **Deciding whether people can make their own decisions:**

Even with help and support, some people do lack capacity to make some decisions and those decisions may need to be taken for them. An assessment must be made in each case, for each particular decision. The assessment should be made by the person who is proposing the decision or course of action. In relation to proposed medical treatment the doctor who is proposing the treatment should assess the person's capacity to consent. In relation to a proposed move of accommodation the Care Manager will generally be the most appropriate person to assess capacity.

### **The assessment of capacity**

The MCA has set out the statutory two stage test of capacity which should be followed.

The first test asks the question – “Is there an impairment or disturbance in the functioning of the mind or brain?” This might be indicated by symptoms, behaviour or the presence of a diagnosis (NB. A diagnosis is not required to pass this part of the test).

If the first stage is met, then the second stage of the test is undertaken. Four questions should be answered :

- a) is the person unable to understand the relevant information ?
- b) is the person unable to retain the information long enough to make the decision?
- c) is the person unable to weigh the information as a part of the decision-making process?
- d) is the person unable to communicate the decision?

If the answer is yes to any of these questions then the person lacks capacity in relation to the specified decision.

### **Supported decision making - Good Practice checklist:**

In trying to decide whether someone lacks capacity, each particular decision must be considered in turn, at the time it has to be made. The person carrying out the assessment should ask themselves the following questions:

- Does the person have all the information or a sufficient amount of information needed to make this decision? If there is a choice, has information been given on any alternatives?
- Could the information be explained or presented in a way that is easier for the person to understand?
- Are there particular times of day when the person's understanding is better or particular locations where they may feel more at ease? Can the decision be put off until the circumstances are right for the person concerned?
- Can anyone else help or support the person to make choices or express a view, such as another family member or, if appropriate, an independent advocate.

Those involved in assessing capacity need to be satisfied that everything practicable has been done to help and support the person to participate to the fullest extent in the process involved in making this particular decision

In cases of fluctuating or temporary incapacity, as in any other case, an assessment must be made of the person's capacity to make a particular decision at the time the decision has to be made. It may be possible to put off the decision until such time as the person has recovered and regained capacity to make their own decision.

#### Recording the assessment of capacity

Refer to local guidance. In Hampshire this includes: the Hampshire Care Management Practice Manual chapter on 'Mental Capacity'. The "Mental Capacity Tool Kit" (to assess whether an individual lacks mental capacity) should be used. It is available in the 'Mental Capacity' chapter on Hantsnet, and also in a paper version and for Adult Services staff, on SWIFT (at the assessment tab pick list). The outcome should then be recorded on SWIFT.

### **Best Interests consultation and decision making**

Any decision made on behalf of a person who lacks capacity to make that decision must be made in the 'best interests' of that person. Determining someone's best interests involves trying to find out what is most important to the person concerned, and what they would have wanted, *not* what would make life easier for people involved in their care. Consultation of all relevant persons is required.

#### **Best interests checklist**

The factors which must be taken into account in trying to decide what may be in a person's best interests are as follows:

- The ascertainable past and present wishes and feelings of the person concerned and the factors the person would consider if able to do so. It is important to ensure that these are their true wishes and have not been influenced by others. An independent advocate may be able to help the person express their wishes.

- The need to permit and encourage the person to participate or improve his or her ability to participate as fully as possible in anything done for or any decision affecting him or her.
- The views of other people whom it is appropriate and practical to consult about the person's wishes and feelings and what would be in his or her best interests. However, bear in mind that the person has a right to confidentiality and may not want certain people to be involved.
- Whether the purpose for which any action or decision is required can be as effectively achieved in a manner less restrictive of the person's freedom of action.
- Try to consider everything which may be important to the person being cared for, even if it may not be directly relevant to the particular decision which needs to be made. For example, religious or cultural values, particular hobbies or interests, likes or dislikes, may all be important in deciding what may be in the person's best interests.
- Avoid discrimination. Do not make assumptions simply on the basis of for example, a persons age, appearance, condition or behaviour.

If the decision is particularly complicated or far-reaching, or if agreement cannot be reached on what is in the person's best interests, it may be necessary to ask the Court of Protection to decide.

Please refer to local guidance on the process of Bests Interests Consultation including the Hampshire Care Management Practice Manual . The consultation process is supported through the use of consultation forms for recording the work undertaken. These are available in local guidance and toolkits. In Hampshire this is in the Care Management Practice Manual on Hantsnet, in a separate paper "Mental Capacity Tool Kit" and also for Adult Services staff, on SWIFT (at the assessment tab pick list). The decision should then be recorded on SWIFT.

## **Financial decisions**

The Hampshire Client Affairs Team (CAT) (formerly known as the Receiverships Team) can advise on cases where a person lacks the capacity to manage his/her financial affairs and there is no other suitable person willing to assist them. Applications to the Court of Protection may be required in some cases for a Deputy to be appointed to make decisions in relation to the property or finance of a person who lacks capacity. Please refer to local guidance including guidance on Mental Capacity in the Hampshire Care Management Practice Manual for further details on the relevant processes.

Where no prior arrangements have been put in place and financial decisions need to be made for a person who has lost capacity, action must be taken immediately to safeguard their financial position and procedures started to appoint someone to act on their behalf, according to their particular needs:

## **Personal relationships**

Social care professionals may become involved in disputes, for example between family members about contact with an adult they believe is unable to decide for themselves, or where relatives may want to stop the person getting involved in a sexual relationship for fear of abuse, concerns about pregnancy or the risk of infection. Social care workers have no rights to decide on such issues themselves, but they may be able to help the person concerned express their own wishes or where the person lacks capacity, to co-ordinate a Bests Interest consultation and decision making process. This process would form a part of the protection planning.

## **Referral to the Court of Protection**

Where decisions are being made on behalf of people who have difficulty deciding for themselves, it is usually possible to reach agreement between everyone involved, including the person concerned, about what's best and what should be done. But sometimes this is not possible.

If the dispute is about a serious matter affecting the basic freedoms of the person concerned, anyone involved can apply to the court to intervene and decide what is in the person's best interests. For example, the court can be asked to decide:

- Whether the person should have certain types of irreversible medical treatment such as sterilisation or the withdrawal of artificial nutrition and hydration from persons in a persistent vegetative state.
- Where the person should live, for example with particular family members or in residential or nursing home care.
- Whether the person should have contact with other family members, for example after the family has been split by divorce.
- Where there is serious uncertainty as to the patient's capacity to consent or their best interests.

Please follow local guidance including: the guidance set out in the Hampshire Care Management Practice Manual.

## Appendix 4

### RELEVANT SUPPORT ORGANISATIONS NATIONAL ORGANISATIONS:

#### Action on Elder Abuse

Astral House, 1268 London Road, London SW16 4ER, Tel: 020 8765 7000  
Raises awareness of elder abuse and provides information. Runs the above response line.

#### Elder Abuse Response

Freephone 0808 808 8141 (10.0am - 4.30pm)  
A confidential helpline service providing information on emotional support for anyone including professionals/paid workers.

#### British Bankers Association

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

→ these organisations ensure best practice by banks

#### Financial Services Authority

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

#### Consumer Complaints Service (for complaints about a solicitor)

0845 608 6565

#### General Consumer Advice Government National Helpline

Consumer Direct- 0845 040506

#### MIND Infoline -

Tel: 0845 7660 163

Information re mental health related issues. Help in finding out options and local services. Operates Monday to Friday 9:15 to 5:15.

#### MIND Legal Advice –

Tel: 020 8519 2122 ext 299

Operates legal advice service on Mondays, Wednesdays and Fridays from 2pm until 4:30pm.

#### PAVA – Practitioner Alliance Against Abuse of Vulnerable Adults

PO Box 4670, Bournemouth BH6 3BL, email [pavauk@hotmail.com](mailto:pavauk@hotmail.com)

This organisation seeks to generate positive outcomes in working with vulnerable adults by empowering and informing practitioners.

#### POPAN (PREVENTION OF PROFESSIONAL ABUSE NETWORK)

Delta House, 175-177 Borough High Street, London SE1 1HR

Helpline: 08454 500 300; Administration: 0207 939 9920; [www.popan.org.uk](http://www.popan.org.uk)  
Information for anyone concerned with abuse by Health and Social Care workers.

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

Customer Service Team- 0845 330 2900

**VOICE** - Wyvern House, Railway Terrace, Derby, DE1 2RU, Tel: 01332 295775  
Provide support to people with learning disabilities who have been abused, raises awareness, campaigns and promotes best practice.

## **LOCAL ORGANISATIONS**

### **Advocacy**

Advocacy is provided by a range of organisations/projects/individuals. Help to access these might be provided via Social Services department local offices or local Councils of Community Service or via a number of the organisations listed here.

**Age Concern Hampshire** -  
Tel: 0345 573701

**Local Citizens Advice Bureau - across Hampshire** -  
(see telephone directories)

### **Commission for Social Care Inspection –**

Hampshire, Portsmouth and Southampton.  
4<sup>th</sup> Floor, Overline House, Blehynden Terrace, Southampton, SO15 1GW  
Tel: 023 8082 1300

### **Department of Work and Pensions**

See local telephone directories and DSS website [www.dss.gov.uk](http://www.dss.gov.uk)

### **Solent Mind**

54 Henstead Road, Southampton. SO15 2DD.  
Tel: 02380 334977; Fax: 02380 208902

### **Alzheimer's Society**

Southampton Branch, Glen Lee, Wavell Road, Southampton, SO18 4SB  
Tel/Fax: 02380 474657 (seems to include Winchester, Hythe, Totton, Romsey....)

### **Hampshire County Council, Adult Services**

Contact your nearest Social Services office and ask to speak to the duty Social Worker. Addresses are listed under Social Services in the telephone book.

### **Hampshire County Council Trading Standards. Useful numbers**

Quick response team. If a rogue trader is on the premises or about to return. This team can go out immediately to deal with the trader  
01329 316215

Ongoing issues in a particular situation. Call the community projects team.

01962 846232 or email [doorstep.crime@hants.gov.uk](mailto:doorstep.crime@hants.gov.uk) Min to Fri 9 to 5

Scheme of approved traders run by Trading Standards

01962 869765 or [www.buywithconfidence.info](http://www.buywithconfidence.info)

### ***PLOD – POLICE LINK OFFICERS FOR DEAF PEOPLE***

**North West Hampshire:** PC Brian Dixon

Mobile/Text: 07769 882472, Mobile Fax: 07769 889029, Minicom 01256 405353

**South West Hampshire:** Sgt Glen Barham

Mobile/Text: 07769 881144, Mobile Fax: 07769 889027, Minicom: 02380 674315

**North East Hampshire:** PC Kerry Easton

Mobile/Text: 07769 885917, Mobile/Fax: 07769 889054

**South East Hampshire:** PC Lynne Fanton

Mobile/Text: 07769 885973, Mobile/Fax: 07769 889061, Minicom: 01962 871557

### **Police**

Contact your local police station and ask to speak to a Detective Inspector. Addresses are listed under Police in the telephone book.

Central contact number for Hampshire Police: 0845 045 4545