

A Guide to Investigations

The Office of the Public Guardian is part of the Scottish Courts & Tribunals Service. We are an independent body and do not represent any other person or public body.

The Adults with Incapacity (Scotland) Act 2000 gives 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. When we talk about risk, we mean either current or future risk. In terms of this legislation, an adult is a person who is aged 16 years or more.

What can be investigated?

We can investigate:	We can't investigate:
<ul style="list-style-type: none"> • 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; • The way a person with powers to manage an adult's finances or property, is using their authority; • The way a third party, who has no authority to manage the adult's finances, is involved in the adult's finances. 	<ul style="list-style-type: none"> • Disputes between joint attorneys • Concerns raised in respect of a capable adult • Concerns relating to the welfare of an incapable adult • Following the death of an adult • Deprivation of capital issues • Where a capable adult is seen as vulnerable or where the concern relates to welfare issues. Please contact the relevant local authority as they can take action under the Adult Support and Protection (Scotland) Act 2007. <p>We can't:</p> <ul style="list-style-type: none"> • Recover funds identified as lost due to misuse or abuse. Therefore an early referral is imperative, to ensure the adult's current and future funds are safeguarded. • Attempt to resolve any personal or family disagreement or business disputes (e.g. funding issues); • Recover any debt owed by a third party to the adult

Will the investigation be confidential?

All information collected during an investigation will remain confidential and will not be shared with third parties. We do not disclose details of who raised the concern or any investigation findings to other parties during or at the conclusion of an investigation. We are required by legislation to share details with the local authority if we consider the adult to be at risk. Depending on our findings we may report details to the sheriff court or to the police if there is evidence a criminal act has been committed.

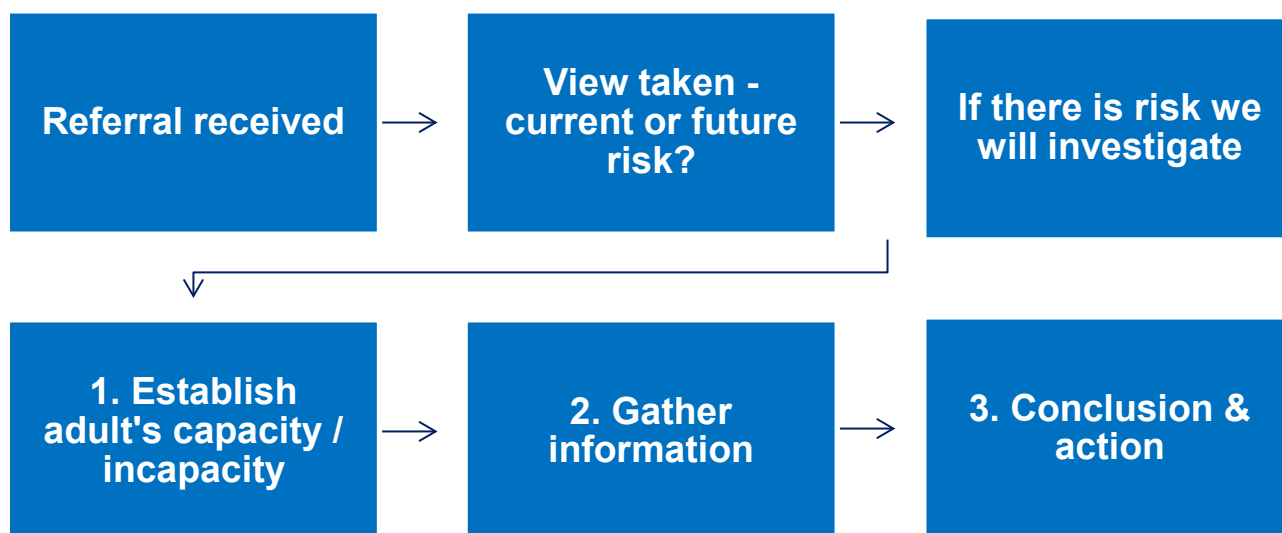
How do I ask for an investigation to be started?

If you wish to raise a concern you should complete our [referral form](#) and explain the reasons why you think that the adult's property and/or financial affairs appear to be at risk. Provide as much information and evidence as you can to support your concerns in the referral form. This will help us establish whether we have a remit to commence an investigation. [Case studies](#) are available on the website if you wish to find out more about the type of concerns we can investigate.

We will also ask you to comment on the adult's capacity / incapacity to manage their own affairs. It would be helpful to indicate when the adult started to become incapable of looking after their own affairs. The legislation defines incapacity as being incapable due to a mental disorder or inability to communicate. Incapable means incapable of:

- Acting on decisions; or
- Making decisions; or
- communicating decisions or
- understanding decisions or
- retaining the memory of decisions

The investigation process



1. Establishing the adult's capacity/incapacity

At the beginning of an investigation, we will ask the adult's GP or consultant to complete a report to establish whether or not the adult involved has capacity. The detail in the report lets us establish whether we have a remit to investigate.

2. Information/evidence gathering

We have been given a specific power to request records and paperwork relating to the property or financial affairs belonging to an incapable adult. If it has been established that the adult is incapable, we will ingather information from relevant parties and a variety of sources. Documentation such as medical opinions, bank statements, financial records, receipts, legal papers etc. is then reviewed. It is likely that we will contact the person being complained about too and we may arrange a meeting to obtain more information to how the adult's property is being dealt with. We do not provide ongoing updates on case progress but we will provide an update at the end of an investigation.

3. Conclusion and action

Once all the evidence and information gathered and been looked at, a view is taken by us as to whether or not the adult's property and/or financial affairs appear to be at risk. We can put safeguards in place if the adult's property or financial affairs are found to be at risk. However if we consider that there is no risk then no further action will be taken.

We will advise all relevant parties of the outcome of the investigation. We will not provide specific details, as the information obtained during the investigation is confidential. We will only advise that the adult's property and/or financial affairs have, or have not, been at risk. If at risk we will advise that steps have been taken to safeguard the adult's property and/or financial affairs.

If it is our view that there is risk

- Advice and guidance may be given to the appropriate parties so that safeguards can be put in place to protect the adult's property and financial affairs
- In certain circumstances restrictions can be placed on the adult's bank accounts or their income suspended until it can be 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 Adults with Incapacity (Scotland) Act 2000, for example: the access to funds scheme or financial guardianship.
- An application may be made to the Sheriff seeking to have a person acting under the Act or under any authority to be supervised, or be ordered to submit accounts for audit by us, or have any or all of the powers or their appointment revoked.
- If there is an indication of criminality then we may refer the matter to the police.
- Refer the matter to the local authority as a legal requirement in terms of section 5 (3) of the Adult Support and Protection (Scotland) Act 2007

If it is our view that there is no risk

No further action will be taken. However, advice and guidance may be given, for the continued protection of the adult's interests. We may monitor or review the situation to ensure issues have been resolved and our advice or guidance is being followed.

How long will an investigation last?

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

What happens if the adult dies during the course of an investigation?

When an adult dies during an investigation our involvement in the matter comes to an end. We require written confirmation of death e.g. a copy of the death certificate.

When an adult dies prior to the conclusion of an investigation, any outstanding financial matters can be pursued by the executor of the adult's estate. Interested parties are also free to seek direction from a Sheriff. If appropriate, we may offer a view to the complainer in our closing letter as to what further steps they might take regarding their concerns or who they might contact for further assistance. However as we are not legally qualified, it is recommended that professional legal advice is sought when considering taking any legal action.

Dissatisfied with the outcome of an investigation?

If we have informed you that the adult is not considered to be at risk and you are not satisfied with the outcome you can make an application to the Sheriff. Anyone who is concerned, at any time, (even during the course of an investigation), can make an application to the Sheriff for any order under the Adults with Incapacity (Scotland) Act 2000.

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 or the Adult Support and Protection Specialist Team) 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 email: enquiries@mwscot.org.uk

Further information and guidance is available from:

Investigation Team
Office of the Public Guardian (Scotland)
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Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

DX 550360 Falkirk 3

- Telephone: 01324 678350
- E-Mail: OPG-INV@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk
- Opening hours: 9am – 5pm Monday to Friday