

EAST AYRSHIRE COUNCIL

CABINET: 29 JUNE 2011

ACCESS TO FUNDS

Report by the Executive Director of Educational and Social Services

1 PURPOSE OF REPORT

1.1 The purpose of this report is to:

- (i) Provide information on the actions the Council undertake to protect financial interests where an individuals lack the Capacity to do this independently.
- (ii) Agree proposed actions required in order for the Council to implement the Access to Funds scheme.

2 BACKGROUND

2.1 The Adults with Incapacity (Scotland) Act 2000 (AWI Act) can be utilised where adults have been assessed as lacking capacity with respect to all or elements of their lives. Interventions can be granted to intervene in order to manage either welfare and/or financial matters of the person lacking capacity by social work services or privately by friends of families.

2.2 It covers people whose incapacity is caused by a mental disorder, such as dementia, learning disability, acquired brain injury or severe mental illness. The Act supports the Council in managing and safeguarding the welfare and finances of the person.

2.3 The AWI Act requires the following principles to be applied when there are interventions in a persons life:

Principle 1 – Benefit

Any action or decision taken must benefit the adult and only be taken when that benefit cannot reasonably be achieved without it.

Principle 2 – Least restrictive

Any action or decision taken should be the option that restricts the person's freedom.

Principle 3 – Take account of the wishes of the adult

In deciding if an action or decision is to be made, and what that should be, account shall be taken of the present and past wishes and feelings of the adult.

Principle 4 – Consultation with relevant others

In deciding if an action or decision is to be made and what that should be, account shall be taken of the views of: the nearest relative and the primary carer of the adult.

Principle 5 – Encourage the adult to exercise whatever skills he/she has and to develop new skills

Any person exercising functions under the Act shall, encourage the adult to exercise whatever skills he or she has concerning their affairs.

3 ACCESS TO FUNDS SCHEME

3.1 Where a person is assessed as lacking capacity to manage their financial affairs there are a number of interventions available.

- Financial Guardianship
- Power of Attorney
- Intervention Orders
- Access to Funds

Residents of East Ayrshire benefit from the first 3 options but the Council does not offer the Access to Funds solution at this point in time.

3.2 Part 3 of the AWI Act was formerly known as ‘Intromission with Funds’. This was amended to ‘Access to Funds’ following the introduction of Part 2 of the Adult Support and Protection (Scotland) Act 2007 which was enacted on the 1st April 2008.

3.3 The Access to Funds scheme is a way of accessing the adult’s bank account in order to meet his/her normal living costs. An application for Access to Funds is made following a case conference which involves the professionals and the individual concerned or their representative.

3.4 The Office of the Public Guardian (Scotland) (OPG) is the main body which regulates the Access to Funds scheme and has a wide range of powers under the AWI Act to:

- Authorise access to funds, register withdrawers and issue certificates;
- Register powers of attorney, intervention and guardianship orders
- Supervise financial guardians and withdrawers
- Investigate complaints against anyone authorised to manage the finances of an adult

4 CURRENT POSITION

- 4.1 As at 15 June 2011, 131 Guardianship Orders are in place for Adults in East Ayrshire Council, of which 61 orders are for Financial Guardianship. In addition, informal arrangements are in place for a further 30 adults with incapacity. It is anticipated that of these 91 people at least 30 of these individuals will benefit from Access to Funds.
- 4.2 The Council has a number of arrangements in place to protect adults with incapacity, namely:
- Use of external accountants and solicitors acting as financial guardians- This is appropriate in some situations but for people with limited funds this can be expensive and results in the Council providing financial support.
 - Corporate Finance (Senior Accountant) acting as financial guardian- This is a personal appointment and is not appropriate for an officer of the Council.
 - External service providers accessing funds on behalf of service user- This is appropriate in some situations e.g. care homes but in others does not fully provide safeguards for the individual.
 - Informal arrangements monitored by Social Workers – This does not fully provide safeguards for the individual.
- 4.3 The Access to Funds Scheme provides an alternative intervention that facilitates day to day support and management of funds by the Council within a clear statutory framework.

5 PROPOSED ACTIONS

- 5.1 It is proposed the Council apply to the Office of the Public Guardian in order to register for the Access to Funds Scheme.
- 5.2 An officer will be tasked to undertake Access to Funds duties on behalf of the Council.
- 5.3 Policy, Procedures and Practice Guidance have been prepared for operation of the Access to Funds Scheme and are attached as appendix 1.

6 LEGAL IMPLICATIONS

- 6.1 The Council has a duty under Adult Support & Protection and Adults with Incapacity legislation to protect vulnerable adults utilising minimum intervention.

7 HUMAN RESOURCE AND FINANCIAL IMPLICATIONS

- 7.1 Appointing an officer to undertake activity relating to 'Access to Funds' on behalf of the Council will be a more cost effective alternative to preparing and

undertaking applications for guardianship across social work and legal services and for finance or a representative undertaking the financial monitoring. The proposed post has been subject to Job Evaluation and graded at G7.

- 7.2 Costs associated with the post will be sourced from within existing resources, including those currently utilised to pay for external interventions.

8 COMMUNITY PLANNING

- 8.1 Proposals within this report seek to provide a system to protect vulnerable people in our communities supporting the Improving Health and Wellbeing and Improving Community Safety Themes of the Community Plan.

9 RISK IMPLICATIONS

- 9.1 Proposals within this report seek to enhance the range of measures available to protect vulnerable individuals in the least intrusive manner contributing to addressing risks to both individuals and the Council.

10. EQUALITY IMPACT

- 10.1 The policy and procedures for operation of the Access To Funds Scheme in East Ayrshire will be subject to Equality Impact Screening, the development supports the principle of minimum intervention in the lives of people with who lack capacity to take certain decisions independently.

11 RECOMMENDATIONS

- 11.1 Cabinet is asked to:-

- (i) Note the actions the Council undertake to protect the financial interests where individuals lack the Capacity to do this independently.
- (ii) Agree to the Council making application to the Office of the Public Guardian to be recognised as a fit organisation able to undertake duties associated with Access to Funds.
- (iii) Agree the implementation arrangements in paragraph 5.
- (iv) Endorse the Policy, Procedures and Practice Guidance for operation of the Access to Funds Scheme.
- (v) Otherwise note the content of this report.

GRAHAM SHORT
EXECUTIVE DIRECTOR OF EDUCATION AND SOCIAL SERVICES

EF/AF/JQ
14/06/2011

LIST OF BACKGROUND PAPERS

Adult Support and Protection (Scotland) Act 2007

For further information on this report please contact:-
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**IMPLEMENTATION OFFICER: EDDIE FRASER, HEAD OF SERVICE:
COMMUNITY CARE**

Appendix 1



Policy, Procedures & Practice Guidance

**Department of Educational & Social Services
Community Care**

Adult Support and Protection

Adults with Incapacity – Access to Funds

Date Completed: June 2011

Date of Equality Impact Assessment: TBC

Date Approved by Head of Service: TBC

Date Review Due: June 2012

Lead Officer: Service Manager – Mental Health Partnership

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Terminology Acronym Key

ASP – Adult Support and Protection

ATF – Access to Funds

AWI – Adults with Incapacity

CC – Case Conference

OPG – Office of the Public Guardian

1. Introduction

The Adults with Incapacity (Scotland) Act 2000 (AWI) was introduced to protect individuals with incapacity and provide support for their families and carers in managing and safeguarding the individuals' welfare and finances.

The AWI Act introduced arrangements to help people (age 16 and over) who lack capacity to act or make some or all decisions for themselves. It covers people whose incapacity is caused by a mental disorder, such as dementia, learning disability, acquired brain injury or severe mental illness. The Act supports the organisation in managing and safeguarding the welfare and finances of the person.

Part 3 of the AWI Act was formerly known as 'Intromission with Funds'. This was amended to 'Access to Funds' following the introduction of Part 2 of the Adult Support and Protection (Scotland) Act 2007. Part 2 was enacted on the 1st April 2008.

Note: The Scottish Government has prepared a Code of Practice – Access to Funds in collaboration with the Office of the Public Guardian, which has informed this document.

2. Legal Solutions Forum

When Social Work receive a referral or become aware of an adult whose capacity has become impaired, the case will be allocated to a worker who will complete an assessment of need and present this assessment to their Team Manager for authorisation. Following this process (and if appropriate) the case is then referred by the Team Manager to the weekly Legal Solution Forum for review. This forum is attended by the Case Manager, the Mental Health Co-ordinator, the Adult Protection Co-ordinator, a Council solicitor and other case specific individuals.

The Legal Solutions Forum (LSF) provides health staff and all officers of the local authority with an opportunity to bring complex cases for discussion where there are indications that statutory intervention may be required to support a plan for treatment, care and/or protection in relation to welfare or finances for an adult or child.

Where it is clear that a welfare or financial guardianship is required, the Social Work Team Manager should arrange for a case conference without delay.

There may be cases where it may not be immediately clear which legislative intervention, if any, may provide the best way forward, or it may be that the application of a combination of different pieces of legislation may require to be considered, then referral should be made to the LSF.

If the decision of this referral is that current arrangements for managing and safeguarding the individuals' welfare and finances are insufficient, then a case conference is arranged. Once the outcome of the Case Conference is known and the decision is made to proceed with a welfare or financial guardianship, contact is made with the relevant medical officer to confirm incapacity and obtain a Certificate of Incapacity.

3. Case Conference

The initial case conference is attended by the service user, their appointee/advocate, Health Professional, Care Manager, Team Manager, a Council solicitor (where appropriate) and other case specific individuals.

The Case Conference will explore what actions will be required under relevant legislation to achieve the desired outcome. Any proposed action will take account of the principles of the relevant legislation, including the principles of the AWI legislation detailed below. The Case Conference will also allocate tasks and agree timescales for these tasks to be completed. The Case Conference is chaired by the relevant Social Work manager and discussion, presentations and minutes are confidential. Case Conference Minutes are circulated to all invited participants with a note of decisions taken.

Principles to be followed

The AWI Act requires the following principles to be applied when deciding which method will be most suitable for meeting the needs of the individual. The principles must also be used whenever decisions need to be made on behalf of the adult. The Act aims to protect people who lack capacity to make particular decisions, but also to support their involvement in making decisions about their own lives as far as they are able to do so. A decision or action should only be taken when the person is unable to do so for him or herself.

Principle 1 – Benefit

Any action or decision taken must benefit the adult and only be taken when that benefit cannot reasonably be achieved without it.

Principle 2 – Least restrictive

Any action or decision taken should be the option that restricts the person's freedom.

Principle 3 – Take account of the wishes of the adult

In deciding if an action or decision is to be made, and what that should be, account shall be taken of the present and past wishes and feelings of the adult.

Principle 4 – Consultation with relevant others

In deciding if an action or decision is to be made and what that should be, account shall be taken of the views of: the nearest relative and the primary carer of the adult.

Principle 5 – Encourage the adult to exercise whatever skills he/she has and to develop new skills

Any person exercising functions under the Act shall encourage the adult to exercise whatever skills he or she has concerning their affairs.

Assessment of Capacity

In following these principals, the initial assessment of capacity is completed and authorised prior to being presented at Legal Solutions Forum. Following a decision at the meeting, a case conference is then arranged.

The case conference should address the following issues:

- Confirm incapacity and agree date for Certification of incapacity process to be completed by (this process is time bound);
- Current arrangements for managing the adult's finances;
- Concerns and risks relating to the adult's financial affairs;
- Complexity of the adult's financial affairs e.g where assets include heritable property, stocks, shares and investment bonds. In those circumstances a Financial Guardianship should be considered.
- Items of expenditure such as food, fuel, rent, care charges etc. which could be considered under the Access to Funds scheme;
- Alternative ways of managing the adult's financial affairs, including other possible informal arrangements;
- How Access to Funds will be managed locally for the adult;
- Determine whether or not the adult is in agreement to any proposed financial arrangements.

The case conference can make the following decisions:

- That an application is made on behalf of East Ayrshire Council to manage the adult's finances under the Access to Funds scheme;
- Determine whether or not notification of the decision to apply for Access to Funds should be dispensed with if notification may be detrimental to the adult's health;
- Determine whether or not the adult has a bank account which can be accessed;
- Assist relatives/carers or another organisation to make an application;
- Recommend an application for Financial Guardianship;
- Draw up a financial plan with the agreement of the adult (appointee or Legal guardian);
- Take no further action.

Note: An application for Access to Funds should only be made if (1) it is not possible to safeguard the adult's finances by other means, including a Financial Guardianship, Power of Attorney or Intervention Order; and (2) the adult is unwilling and/or incapable of participating in such arrangements.

If a decision has been made at the Case Conference to apply for Access to Funds, the application will be prepared in the name of the Chief Social Work Officer/Head of Service: Community Care.

4. Access to Funds scheme

The Access to Funds scheme is a way of accessing the adult's bank account in order to meet his/her normal living costs. An application is made to the OPG on behalf of the adult by the Council.

Note: An application for Access to Funds is made after a Case conference decision and follows the principles of the AWI Act in that it restricts the person's freedom as little as possible but at the same time enables the purpose of the action to be achieved (Principles 1 and 2 – benefit and least restrictive).

A person authorised by the OPG under Part 3 of the Act to withdraw funds from the account of an adult and apply them for the adult's benefit is referred to as the 'withdrawer'.

5. Access to Funds Application Process

Note: East Ayrshire Council's fitness to access funds approval number is [to be confirmed]

Each application is completed by the Access to Funds Assistant and Care Manager for review by such other Council Officers as are considered appropriate, then forwarded to the CSWO for authorisation prior to its submission to the Office of the Public Guardian.

The application should be signed by (at least) two 'withdrawers' so that the authority to access funds certification is granted to these officers.

If the adult has a bank account, the Access to Funds Assistant should check if details of the account can be obtained for the purposes of the application. If it is not possible to obtain details or the bank or building society is unable or unwilling to release them, form ATF 1, should be completed by the Access to Funds Assistant. This gives authority to approach the fund holder to obtain details of accounts. The ATF1 Certificate has a currency of 3 months to allow this to be completed (see Annex 1).

The care manager should arrange for the relevant Certificate of Incapacity to be completed by the adult's GP (medical practitioner).

Once details of the adult's account(s) have been obtained, application form ATF 2 should be completed, to include details about the adult, the East Ayrshire Council Reference Number, relatives and interested parties, details of the adult's account(s) and the new account to be set up, and details of how the funds are to be used. Consideration should be given to the regular items of expenditure that are to be paid by standing order or direct debit, and any one-off items that may be needed.

Note: A Certificate of Incapacity is required at the time of the first application. A further Certificate is not required to accompany an ATF2 application if one was already obtained for ATF1 provided that the ATF2 is submitted within 4 months of the granting of the ATF1 certificate. That is, the Certificate of Incapacity has a currency of 4 months from the granting of the ATF1.

If the adult does not have a bank account, the OPG should be approached to authorise the opening of a bank account in the adult's name, into which funds can be deposited. The OPG will issue a Certificate (see Code of Practice page 16, para 2.21).

Once the application form is completed it should be returned to the OPG together with the appropriate fee, within 14 days of being signed.

The authority to access funds normally lasts for 3 years, but a different period can be requested in the application form.

6. Role of 'Withdrawer'

With reference to Part 3 of the AWI Act, the Office of the Public Guardian will issue (following completion of the application) a certificate of authority (a 'withdrawal certificate') to the Council on behalf of the adult.

Withdrawal certificate

A withdrawal certificate will:

- authorise the transfer of funds:
 - from the adult's current account to the Council's designated account;
 - from the adult's current account to the adult's second account;
 - from the designated account to the adult's second account.
- authorise the continuance of making arrangements for the regular or occasional payment of funds from the adult's current account for specified purposes (e.g. Direct Debit or Standing Order);
- authorise the withdrawal of funds from the designated account for specified purposes.
- place limits on the amount of funds that may be transferred, paid or withdrawn.

Note: a withdrawal certificate **does not authorise** a transfer of funds or payment that would cause any account to become overdrawn.

The signatories for the designated East Ayrshire Council account will be:

1. Senior Manager – Authority Wide Services;
2. Service Manager – Mental Health Partnership;
3. Principal Officer Resources
4. Resource Manager

The Access to Funds Assistant will administer the day-to-day transactions and two of the above officers will authorise withdrawals from the designated EAC account.

7. Role of Access to Funds Assistant

A separate bank account known as the 'designated account' will be opened by the Council to administer Access to Funds transactions. Monthly statements on this account will be sent to the Resource Manager.

Arrangements to transfer funds from the adult's account to the designated account as agreed in the application should be made, including the setting up of standing orders and direct debits.

The Access to Funds Assistant, in conjunction with the individual's Care Manager, will monitor the bank accounts and keep a record of transactions (see Annex 2).

The care manager should discuss with the Access to Funds Assistant where there may be a need for lump sums or one-off payments for single items such as furniture etc.

In such a case, the Access to Funds Assistant should make an application to the OPG using Form ATF5. This form should also be used where regular payments have to be varied because of a change in circumstances.

The Access to Funds Assistant should make arrangements for file notes to be added/updated in the individuals SWIFT records.

8. Monitoring and Review

Monthly Accounts

The Access to Funds Assistant will prepare monthly reconciliations of the designated accounts held on behalf of each client. These will be subject to monthly review and authorisation by the Resource Manager. The Corporate Accounting Section of the Council's Finance Service through the Financial Services Manager will provide advice and assistance to the Access to Funds Assistant and Resource Manager when it is considered appropriate and/or necessary to do so. Further, the existing Non Statutory Audit Contract that the Council has with an external firm of accountants, may be utilised to provide further independent review where it is considered necessary and appropriate to do so. In the event that the said Non Statutory Audit Contract is implemented, arrangements will be made through the Finance Service for this review to be undertaken. The cost of this further review under the said contract will be met by the Department of Educational and Social Services.

Internal Audit

The Council's Internal Audit Section may also review the reconciliations of the designated accounts, where required, in order to ensure that the Council's Access to Funds procedures are being correctly and appropriately applied.

Case Conferences

A Case Conference should be held at least annually and must include the monitoring of the Access to Funds scheme to ensure it is operating for the benefit of the adult.

A Case Conference can be called at any time if there are major concerns or significant changes in circumstances. At Case Conferences the decision to continue the scheme; apply to vary it; or apply to terminate the authority, are taken and recorded.

The Case Review form should be completed as soon as reasonably practicable after the date of the Case Conference and certainly within **10 working days** of it taking place. It should then be sent by email to the Access to Funds officer so that the said officer can take steps to implement the decision of the Case Conference as soon as possible thereafter.

Database

The Access to Funds officer must maintain a data base of all Access to Funds applications, to include, outcomes, officers involved, references to OPG, nature and amounts of funds involved.

9. Contact Information

The Office of the Public Guardian,

Hadrian House,

Callendar Business Park,

Falkirk FK1 1XR

Tel. No. 01324 678300

www.public-guardian-scotland.gov.uk

List of Application Forms relating to Access to Funds

The forms to be completed will depend on your starting point and the financial arrangements needed. The forms are self explanatory and guidance notes on completion of the forms are built in. However, if you are unsure of anything you should contact the Office of the Public Guardian where staff will be happy to assist. A full list of the forms and what they are for is given below for easy reference.

Application forms can be obtained direct from the Office of the Public Guardian. The forms can also be obtained from the Public Guardian's website: www.publicguardian-scotland.gov.uk.

Request account information – Form ATF (1)

This form requires to be completed by applicants who propose to use the access to funds scheme but do not have sufficient financial information available to allow them to progress an application or decide if the scheme is suitable.

Medical Certificate (to be completed by a medical practitioner) to accompany Form ATF (1)

Open accounts and/or Access to funds – Form ATF (2)

This form requires to be completed by all applicants, who wish to open and/or operate the access to funds scheme on behalf of an adult. The main purpose of the access to funds scheme is for authority to use the adults' funds for his/her benefit. The application form gives examples of how this should be done.

Medical Certificate (to be completed by a medical practitioner) to accompany Form ATF (2)

Note: that medical certificate is not required to accompany form ATF (2) if your entry point to the scheme was using form ATF (1).

Transition from guardianship – Form ATF (7)

This form should be used where there is a guardian with powers relating to the property and financial affairs of an adult and it is felt that the affairs can be properly managed using a lesser form of intervention, i.e. access to funds scheme.

Note: The following forms for applications after Access to Funds has been authorised

Additional joint withdrawer(s) – Form ATF (3)

This form should be used where an access to funds is already approved and the applicant wishes additional persons to be appointed or some other person wishes to be appointed with the approval of the main withdrawer.

Addition of reserve withdrawer – Form ATF (4)

This form should be used where an access to funds is already approved and the main withdrawer wishes to identify a reserve withdrawer.

Variation of basic or other financial transactions – Form ATF (5)

This form should be used where an access to funds is already approved and there is a need to vary the existing financial arrangements or to carry out other financial transactions not identified in the original application.

Renewal of authority to intromit – Form ATF (6)

This form should be used where an access to funds is already approved and the period of authority is about to expire or an appointed reserve withdrawer is aware that the existing withdrawer is no longer able or capable of acting as withdrawer to the adult.

Financial Transaction Flow Chart

The chart below provides an overview of the authority the legislation allows with regard to the more basic transactions which can be applied for. Basic transactions are fully described in the appropriate ATF application forms. Only the transactions as specifically requested and identified in your certificate of authority can be undertaken, i.e. arrange regular transfer and, if appropriate, one off lump sum, from current account to designated account.

Standing orders/Direct Debits can be set up on the current and/or designated accounts to pay for goods and services on behalf of the adult and funds in the designated account may be used to pay for goods and services as requested in the application to access funds.

