SCHEDULE 6b

SAFEGUARDING SERVICE USER BELONGINGS

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Adults, Health and Community Wellbeing

A Guide for Providers

Safeguarding Service User Finances and Belongings

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Document Control Sheet

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Essex County Council

Foreword

Partner organisations in Essex believe that it is vital that anyone who is reliant on us for support and care, in any way, should feel safe, secure and be protected in doing that. The importance of this was highlighted by the Healthcare Commission and Commission for Social Care Inspection (now known as Care Quality Commission) investigation into abuse within a number of learning disability services in Cornwall.

The inspection report was published in July 2006.It included findings of financial abuse and clearly stated the requirement of all Local Authorities to implement safeguarding procedures to ensure similar events do not occur elsewhere.

As an integral part of these safeguarding procedures, there is a need to ensure that care providers have access to detailed guidance which outlines how to provide financial support to others in the most appropriate way.

This guidance provides a comprehensive operational template for care providers and staff to use in all settings, including residential, nursing, domiciliary and supported living, to reinforce best practice when supporting a service user with finances and belongings.

The Safeguarding Board welcomes the introduction and implementation of the guidance, which is fully supported by Essex County Council, Adults, Health and Community Wellbeing and Health trusts as a means to formally safeguard service users from financial abuse.

Aidan Thomas
Chair of Essex Safeguarding Adult Board.

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1. Introduction to Guidance

1.1 Scope of Guidance

The Guidance:

1. Provides recommended practice to all organisations in Essex in safeguarding Service User's finances.
2. Applies directly to all Essex County Council Provider Services

1.2 Background of Guidance

In July 2006, the Healthcare Commission and Commission for Social Care Inspection (now known as Care Quality Commission) published its joint investigation into learning disability services at Cornwall Partnerships NHS Trust. The investigation was triggered by serious concerns raised by East Cornwall Mencap Society in October 2004 about care and treatment of people living in the Trust's assessment and treatment centres and supported living centres. The Cornwall report found there to be systematic abuse of people in a number of the Trust's learning disability services.

Along with other forms of abuse, one of the areas highlighted in the Cornwall Report as a cause for concern, was the arrangements to manage the finances of people in supported living services in Cornwall.

As a result of this investigation in Cornwall, all Local Authorities are now required by the Care Quality Commission to implement procedures to ensure similar events do not occur elsewhere.

This guidance also supports the requirements for supporting people who purchase services directly from you as a self-funder or through the Direct Payment or Personal Budget Scheme.

1.3 Definition of Financial Abuse

Financial abuse or material abuse, including 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. (Department of Health (2000) No Secrets).

"Care homes and home care services must ensure that the contract for the service they provide is fair and that people receive the services they pay for. Care services also must have procedures in place so that people's finances and possessions are well-managed. While a fair contract and good procedures help to minimise the risk, they alone will not keep peoples' finances safe. Abuse and neglect are the result of human interactions and so cannot be completely eliminated. If financial or material abuse does occur, the service needs to respond appropriately to safeguard those affected, stop the inappropriate behaviour and make sure it does not happen again." (In Safe Keeping CSCI Issue 6 May 2007).
Care Quality Commission

It is important to recognise that financial abuse can be carried out by anyone who is in contact with that Service User, such as a family member, a neighbour, a personal assistant or a formally commissioned care provider.
'The abuse of a person's finances by someone in a position of trust is punishable with a maximum penalty of ten years imprisonment.' (Fraud Act 2006)

1.4 Purpose of Guidance

The purpose of this Guidance is to address one of the outcomes of the Cornwall investigation by developing a Practice Guidance to safeguard Essex Service Users' finances. The Guidance outlines essential procedures to be followed by Providers in their handling of Service Users' finances and belongings. Whilst it is recognised that it may be impossible to completely eliminate all forms of financial abuse in care settings, the Guidance seeks to both protect service users from potential financial abuse and protect Providers from accusations of misconduct.
This Guidance offers a framework for Providers to use this Essex Safeguarding Adults Board policy and develop their own documentation and procedures in line with the requirements of Essex County Council and other commissioner's contracts. Specifically the guidance clarifies the role and responsibilities of Essex County Council and the Provider in the management of Service User finance. A Toolkit is included to offer guidance and information on how financial support can be provided.

1.5 Roles and Responsibilities

The Care Quality Commission (CQC) states that the care providers have a duty to establish robust financial management procedures.

The Provider is obliged to:

- Develop internal policies and procedures which meet the standards set out in this guidance.
- Formally present a copy of their internal policies and procedures upon request to the Authority.
- Ensure that internal policies and procedures are in line with all relevant legislation and are updated appropriately when there are changes to legislation.
- Implement robust procedures and train staff accordingly.
- Ensure adherence to policies and procedures.
- Allow the Authority access to all necessary relevant documentation to complete an audit and any further monitoring as required.

The Authority is obliged to:

- Provide a clear robust commissioning document which is states the needs of the individual service user, including self-funders.
- Provide, where applicable, within the commissioning document, an assessment of mental capacity and the level of financial support required.
- To ensure Providers implement procedures as intended and in their entirety through monitoring and auditing processes.
- To inform the Provider of the outcome of any monitoring exercises.

- Formally request the Provider remedies any defaults immediately.

NOTE: The Council has issued separate guidance for their staff – Safeguarding Service Users Finances & Belongings – for situations where a service user is admitted temporarily or permanently into hospital or residential care and where provisions need to be made to protect their 'movable property' (in line with the Council's responsibilities under section 48 of the National Assistance Act 1948).

1.6 How to use this Guidance

This Guidance has been structured to provide information on good practice regarding the safeguarding of Service Users' finances and belongings. It applies to providers of care services, managers and care workers who work with service users every day. It incorporates care providers in a range of settings and also sets out the issues in a format that is easy to navigate. **Please refer to Chapter 3 This Chapter is the Financial Toolkit which provides detailed information to support the development and expectations of policies and procedures.**

2. Chapter 1

It is the purpose of this chapter to outline good practice standards (particularly as expected by Essex County Council) and overarching principles when supporting service users with finances and belongings.

UNIVERSAL POINTS FOR GOOD PRACTICE IN SAFEGUARDING SERVICE USER FINANCES AND BELONGINGS.

All endeavours must be made to safeguard service user finances and belongings at all times:

- Service Users should be treated with dignity and respect at all times.
- Service Users rights to choice and control are paramount at all stages of planning and delivering care.
- Staff should be made aware of the availability of local advocacy services which may support Service Users in choosing how their finances are managed.
- It is a priority at the care planning stage to identify and record in detail whether or not the Service User can manage his/her own finances, to what extent and if not, who is going to be providing the support required. This is often known as a financial profile and should form part of a person-centred care plan.
- When there is a change in the mental or physical condition of a Service User, staff should be fully informed and aware of how to instigate and record procedures to assess and review mental capacity as determined by individual need and in the timescales agreed by specific services.
- The staff must have an understanding of the level of support a Service User requires and how to deliver it within the service commissioned and defined in the individual's care plan.
- The service must be supported by policies, procedures and guidance that:

  - Meet best practice for handling Service Users' finances and belongings.
  - Include clear statements for staff on issues such as accepting gifts, legacies, witnessing wills and other legal documents.
  - Include a clear procedure on how to report discrepancies, irregularities and errors and how and where to record associated actions taken and outcomes: Safeguarding Adults Guidelines
  - Include how the relevant financial information /records are securely held on service user files.
  - Include a clear procedure on how to handle money or valuables on the discharge, transfer or death of a Service User.
  - Are regularly up-dated in line with current legislation and policy.
- Staff should be fully briefed, in writing, on how the management of Service Users' finances and belongings is to be monitored and audited. This should include all aspects of the record-keeping requirements associated with good practice for these purposes.
- The provider should ensure that staff attend mandatory training that covers the internal expectations and responsibilities for supporting service users in managing their finances and belongings including receiving gifts, legacies etc.
- It is essential that staff are provided with and adhere to the above documents for supporting service users with managing their finances and possessions. Staff practice should be monitored, observed and recorded in team meetings and through a structured system for regular professional practice supervision.
- Staff must not influence or advise Service Users in any circumstances about their financial affairs. (This could be deemed as financial advice from an unqualified person and may be open to legal action. Please see "Where to get help" section for contact details of Financial Assessment and Benefit Advice-F.A.B.A.)
- Providers should hold accessible, easy-read and alternative format information for Service Users regarding internal policy and procedures for supporting them with their finances and looking after their belongings.
- If appropriate providers should conduct and record an inventory of Service User belongings with the service user or his/her representative.

It is expected that Providers of care services will adopt these principles as an integral part of internal policies and procedures.

2.1 Principle 1

*To respect people's **rights to control** their finances and personal property.*

- A Service User is entitled to and should whenever possible retain control over his/her money and personal belongings.
- A Service User may need support with managing his/her financial interests but this support should not override his/her right to access his/her money and decide how he/she wishes to spend it.
- Providers should ensure that every effort is made to allow and enable the Service User to continue, where possible, to manage his/her affairs.
- Staff must empower a Service User to exercise his/her rights at all times, remembering that ultimately it is the Service User's choice on how to manage his/her

finances. This includes the right to make what others might see as eccentric or unwise decisions.

- In order to enable independence and involvement, clear procedures must be followed and sound records must be kept. Equally to safeguard a Service User it is vital that he/she is engaged and involved as far as possible with the management of his/her finances.
- An holistic assessment with the Service User fully involved is an integral part of the care planning process. It identifies the wishes of the service user and the level and type of support that may be necessary.
- "The time has now come to build on best practice and replace paternalistic, reactive care of variable quality with a mainstream system focussed on prevention, early intervention, enablement, and high quality personally tailored services. In the future, we want people to have maximum choice, control and power over the support services they receive." (Putting People First - A shared vision and commitment to the transformation of Adult Social Care).

2.2 Principal 2

*Respect the need for **privacy and dignity** in relation to a Service User's financial affairs.*

- Staff are expected to act with honesty and integrity and to maintain the Service User's right to privacy and to be treated with dignity.
- Information in respect of Service User finances and personal belongings is confidential and should not be discussed in inappropriate places or with people who do not need that information.
- Consultation on finances must be held in private.
- Files and confidential information should be stored securely at all times.

2.3 Principal 3

*To **understand and acknowledge** that there are the different levels of support required in relation to financial management.*

- It is important for all care providers and staff to appreciate that levels of support required will differ widely depending on the specific circumstances of the individual and his/her mental capacity.
- Capability is different from capacity. A Service User may have capacity, but not be capable because:

  They have not been given enough information to understand the issue.
  The information has not been in the right format.
  They have not been physically enabled to complete a task.
  They are not feeling well on that day.

- For example many people would not be capable of completing a benefit form without support but have the capacity to make complex financial decisions.
- Capability can be developed with support from others. Care workers can build capability by providing information in easy-read formats, delaying a decision until

someone is feeling better, or by involving an independent advocate to help the person consider their choices.

2.4 Principal 4

To be aware of the importance of ***roles and responsibilities*** *in relation to financial management and record keeping.*

- Care providers must make sure that any support they provide enables a Service User and respects his/her right to control his/her finances and personal property.
- Confidentiality should be ensured at all times, risk of financial abuse should be minimal and a Service User's finances and valuables should be handled in accordance with legislation, regulations and guidance.
- Providers need to ensure that staff are clear about their roles and responsibilities when supporting Service Users with financial matters. This can be achieved by sound induction processes, appropriate training, regular supervision and formal monitoring.
- To avoid any misunderstanding between the staff and the Service User, it is imperative that written records of all actions and transactions are maintained. It is not always possible to foresee situations where a misunderstanding will occur and without written records it could be very difficult to resolve disputes.
- The procedure for supporting and assisting Service Users, together with the relevant recording will vary depending on the specific circumstances and the support needed.

2.5 Principal 5

Staff who support people with their finances should be ***competent****.*

- Providers should be aware of the levels of competence required by staff supporting Service Users with finances.
- Providers should ensure that all recruitment processes are in line with current legislation and recommendations from CQC. cqc.org.uk/
- Expectations around professional boundaries need to be specifically stated.
- Care Providers must provide clear direction and easily accessible up-to-date information for all staff to follow. The information must include how to 'spot abuse and how to initiate safeguarding procedures when there are concerns.' (Better safe than sorry; improving the system that safeguards adults living in care homes CSCI 2006) (Now Care Quality Commission)
- Staff should feel secure in dealing with complex financial situations or should be aware of whom to approach for guidance within their employment.
- Staff should feel confident that the structure is in place to allow them to professionally manage financial situations that could improve a Service User's quality of life without being accused of misconduct.

2.6 Principal 6

Service Users' money and property should be ***stored safely****.*

- Providers need to be aware of The National Minimum Standards as stated by CQC for the safe keeping of Service User money and property and their related responsibilities. *www.cqc.org.uk*
- Providers in residential, supported-living and day-care services should have secure facilities for the safekeeping of money and valuables if requested by the Service User.
- Each provider must operate a comprehensive and robust process for recording detailed and up-to-date files pertaining to what items/cash is being held by the Provider on a Service User's behalf.
- The setting of the care service will determine the specific responsibility to provide secure facilities.

3. Chapter 2

The purpose of this chapter is to explain how the general aspects of financial management relate to specific care services and what those care service providers need to consider and adopt in internal policies and procedures.

SUPPORTING SERVICE USERS WITH FINANCES IN SPECIFIC SETTINGS

Please also refer to the Universal Points for Good Practice

3.1 Residential/Nursing Environments – Adult and Older People

Service specific points for good practice

The policies and procedures specific to the residential care setting should detail:

- How money is obtained for residents including Service User contributions, charges, etc. and what action to take if for example a Service User's capital falls below the local authority threshold.
- A clear procedure for safe-keeping of money and valuables incorporating what to do during periods of Service User absence, such as hospital admission or respite.
- The need for a detailed inventory of personal belongings and cash on admission and could include photographs of items.
- How the Provider arranges secure storage facilities for the safekeeping of Service User money/valuables.
- The policy on personal secure storage in individual rooms as required.
- Insurance limits for the value of cash/belongings held in the safes within the building are checked and not exceeded.
- Where a Service User is accompanied by a pet, a written and signed agreement should be made to clarify the Service User's responsibility for pet care costs.
- *Where a Service User is eligible for a Motability vehicle, the Provider must ensure that the vehicle is used appropriately and for the benefit of the Service User at all times. If in any doubt, the Provider should seek advice from the Motability Scheme Service.*
- Service Users need to be fully advised on the residential establishment's insurance arrangements and limits for valuables and money held on the premises.

- Each Service User should be advised of arrangements to access his/her money or valuables and the Providers' systems should take into account the need for flexibility, weekend and 'emergency' access to money.
- Records of money taken from a Service User's allowance need to be kept centrally, on the individuals' file and include purchases of extra services that are not provided within the care home fee (such as hairdressing and chiropody) It should be clear what the money has been used for and how much has been charged. Receipts are obtained and logged for audit purposes and kept on the Individuals file.

3.2 Re-Ablement/Domiciliary Care And 24 Hour Live-In Care

Service specific points for good practice

- Maintain clear and up to date signed records in the Service Users' home and take copies for the office file for auditing purposes.
- Receipts for cash transactions undertaken by staff should be recorded in a designated log book with duplicate copies held on the Service User's file and the office files for auditing purposes.
- The provider should ensure that internal procedures detail how expenses are covered as/when staff accompany Service Users in the community. For example, going out for lunch.
- Ensure records are held securely in the Service User's home.
- The providers' procedures and the frequency of internal monitoring arrangements should take into account that staff are frequently working without supervision and alone in the Service User's home.

3.3 Housing Support And Supporting Living Arrangements

Service specific points for good practice

- The funds of different Service Users must not be pooled under any circumstances - Service Users must have their own bank accounts.
- The Provider should have a procedure that includes the need for a detailed inventory of personal belongings and cash and could include photographs of items when a Service User takes up a tenancy.
- Service Users should be fully advised on the establishments' insurance arrangements and limits for valuables and money held on the premises. Each Service User should be advised of arrangements to access their money or valuables and the Providers' systems should take into account the need for flexibility, weekend and 'emergency' access to money. Where a Service User is eligible for a Motability vehicle, the Provider must ensure that the vehicle is used appropriately and for the benefit of the Service User at all times. If in any doubt, the Provider should seek advice from the Motability Scheme Service.
- In a shared tenancy, Service Users need to agree how they will split costs and this should be documented.
- A Service User should not be asked to pay for home improvements that are the responsibility of the landlord.
- Communal funds should include clear ledgers of who has contributed, what the expenditure is and why. The provider should ensure that internal procedures detail

how expenses are covered as/when staff accompany Service Users in the community for example, going out for lunch, holidays, etc. Please See Toolkit Financial Management, Outings/Excursions and Holidays.

3.4 Day Care Services

Service specific points for good practice

The policies and procedures specific to the day care setting should detail:

- Insurance limits for the value of cash/belongings held in the safes within the building are checked and not exceeded.
- That Service Users should be discouraged from bringing unnecessary cash into day care.
- A clear and communicated procedure on how to deal with discrepancies, irregularities, errors or concerns in the management of Service User finances and belongings.
- Agreed procedures to obtain and record consent if support with finances is needed.
- A clear and communicated procedure for safe-keeping of money and valuables whilst Service Users are attending day care.
- The principles of the Mental Capacity Act so that staff are fully briefed in how and where to refer the Service User should there be evidence of a change in mental condition and a need to re-assessment.
- How to ensure appropriate records are kept for daily transactions such as, beverage costs, day trips or seasonal celebrations, such as Christmas parties.

3.5 Adult Placement Scheme

Service Specific Points for Good Practice

- The Service User is supported to manage his/her own finances where possible and in line with the scheme's policies and as set down in the care plan.
- The Service User's financial affairs are dealt with appropriately in accordance with the scheme's policy on service users' money.

4. Chapter 3

This is the Financial Toolkit which provides detailed information to support the development and expectations of policies and procedures. ***It is the purpose of this chapter to provide detailed information to support the Provider in producing the necessary and expected policies and procedures.***

THE FINANCIAL TOOLKIT

4.1 How to Recognise Financial Abuse

Action on Elder Abuse and Age Concern listed the following as some of the signs to look out for.

This list is not comprehensive and there can be many other signs of financial abuse. If Providers have any concerns, they should always seek advice from the Safeguarding Unit.

- Unexplained withdrawals from bank accounts.
- Signatures on cheques that do not resemble the person's normal signature, or when the person concerned usually has difficulty writing.
- The inclusion of another person's name on the bank account.
- Numerous unpaid bills when someone is supposed to be paying them on person's behalf.
- Abrupt changes to or the sudden establishment of wills.
- The unexplained transfer of large sums of money or property. A person who has previously managed their money well suddenly failing to pay their bills or keep their property maintained as they had in the past.
- The unexplained disappearance of valuable possessions such as art, silverware or jewellery.
- Someone preventing friends and family from accessing the person, isolating them in order to gain increased control.
- The person becoming anxious and confused about their finances.
- Concern that an excessive amount of money appears to be being spent by care workers on the person's care. Lack of amenities (such as TV, toiletries, appropriate clothing) that the person should be able to afford.
- The person being tense after particular people have visited.
- The sudden appearance of previously uninvolved relatives claiming their rights to a person's affairs or possessions.

Whilst it is important to be constantly alert to the possibility of abuse or misuse of people's finances and property, it is also important to consider that in some cases these issues can also arise through well meaning but misguided action or inaction by families and others.

Therefore it is important to use the SETSAF 1 alert form to raise any concern or uncertainty around such matters, which may include concerns around a persons capacity or capability to offer informed consent to specific financial or property transactions. If there are any concerns in this area please complete a SETSAF 1 or contact a member of safeguards unit for further guidance.

4.2 Financial Management

Financial management is a process with a clear audit trail, of managing a Service User's finances supported by an appropriate policy and practice guidance.

Check list for financial management:

Up to date/accurate records for each individual Service User.
Transparent processes for auditing and monitoring.

Clear accountability and responsibility for staff.
Regular management checks to ensure procedures are followed.
A robust reporting procedure so that staff feel confident and supported in escalating concerns, discrepancies or irregularities to managers or other agencies.
Bills/invoices should be addressed to the service user where possible.

The Service User must have his own bank account ; individuals' money should not be pooled into one account under any circumstances.

4.3 Mental Capacity

Capacity and Decision Making

Under the Mental Capacity Act professionals must start from the premise that every adult has the capacity to make decisions about their care, including financial decisions. A Service User has capacity if they can understand, retain, use and weigh up the information needed to make a decision and can communicate their wishes. A diagnosis alone (i.e. learning disability, dementia, brain injury) does not automatically imply a lack of capacity, there must be other clear evidence of a difficulty in understanding around the specific issue.
Where there are concerns about an adult's capacity to make specific decisions, a formal assessment of capacity will be necessary. Assessing mental capacity usually involves a multi disciplinary approach with assessments undertaken by a range of professionals. However, concerns regarding mental capacity should only arise where a Service User, having been given all appropriate help and support, cannot understand, retain, use or weigh up the information needed to make a decision, or communicate their wishes.
In order to provide support accordingly, it is imperative that Providers and staff are aware of how to instigate the procedure to refer a service user for a mental capacity assessment or a review of their current mental capacity.
A Service User's ability to make decisions may depend on the nature and severity of their condition or the difficulty or complexity of the decision. Some Service Users will always be able to make simple decisions, but may have difficulty if the decision is complex or involves a number of options. Other Service Users' may be able to make decisions at certain times but not others, because fluctuations in their condition impair their ability to understand, retain or weigh up information or communicate their wishes.
It is important to be aware that an individual's capacity to make particular decisions may fluctuate or be temporarily affected by factors such as pain, fear, confusion or the effects of medication.
Staff need to understand the implications of the Mental Capacity Act and it's relevance to not only the assessment process but also the subsequent practice implications for providing ongoing support to the Service User in terms of financial management. Everyone working with an adult who may lack capacity to make decisions must act in accordance with the provisions in the Mental Capacity Act (2005) when assessing the mental capacity of an individual to make a particular decision.
In order to comply with the Mental Capacity Act (2005), ECC have provided written guidelines regarding the assessment of mental capacity for Essex Service Users - The Assessment of Mental Capacity (Guidelines) April 2007.

The Guidelines:

Set out the agreed policy for assessing the capacity of Service Users; and provide the procedures for all staff to follow in the event of concerns regarding capacity.

All people working with an adult who may lack capacity to make decisions must comply with this guidance.
If an individual has been assessed as lacking the mental capacity to make particular decisions for themselves the Mental Capacity Act (2005) and the Code of Practice provides the legal framework for acting and making decisions on behalf of those individuals.
For more information please see: ://www.essex.gov.uk

Deprivation of Liberty Act – see **Appendix D**

Mental Health Act

4.4 Service User's Needs / Level of Support Required

Providers need to be aware that Service Users should have their individual needs met in accordance with their mental capacity and levels of independence in decision making. The levels of support required can be identified by a holistic assessment approach and the development of a person centred care plan.
How the Service User wishes to manage their finances is part of this plan and should be documented and implemented by staff alongside other needs identified. This is called a financial profile. The development of a personal financial profile will help to give staff a clear understanding of the Service User's individual situation, choices and aspirations. It will also identify the level of support needed. See below:

The Service User is able to manage his/her finances and personal belongings without assistance.

In these circumstances, staff must not assist or become involved in the management of the Service Users finances or personal belongings.
Staff should always enable a fully capable and responsible Service User to handle their own finances and personal belongings independently.

The Service User requires assistance to manage his/her finances or personal belongings.

In these circumstances, staff must be aware of and adhere to the support required as detailed in the care-plan/support plan. The policies and procedures of the Provider should be followed when supporting the individual.
Staff must suitably enable a Service User who for example, is able to sign, or consistently make his/her unique mark to make informed choices about the use of his/her finances and personal belongings.

The Service User is unable to manage his/her finances or personal belongings.
In these circumstances it is important that staff are appropriately supporting the Service User, who is incapable of taking responsibility for handling his/her own finances, personal belongings or making choices about their use. This will include situations where the service user:

- Is no longer able to remember how to or is physically unable to sign or make a unique mark.
- Has been assessed as not having the mental capacity to manage some or all aspects of their finances and therefore has specific care needs in terms of finances which have been fully identified and documented.
- Has been assessed as consistently unable to make decisions, choices or retain information.

4.5 Person-centred Care Plan

The Service User may require independent advocacy services to provide support in developing a person centred care plan. A person–centred care plan should be formulated (and regularly reviewed) for each individual.

To support a Service User's independence, Independent Mental Capacity Advocates, were created following the Mental Capacity Act.

Please see section on Independent Mental Capacity Advocates for detail.

Mental Capacity and Finance Flowchart – see **Appendix F**.

4.6 Independent Mental Capacity Advocates

The *Mental Capacity Act* creates a new service called the Independent Mental Capacity Advocate (IMCA) service. This is a service to support and represent people who lack capacity to make important health and welfare decisions themselves and who have ***no family or friends who are willing and able to be consulted*** about the decision.

An IMCA is an independent person who must have the relevant experience and training for the role.

The role of the IMCA is to:

- Support and represent the person who lacks capacity when it is being decided what is in their best interests
- Find information to help assess what is in the person's best interests. This could be information about their feelings, values and beliefs; or it could mean finding out if there is any way of helping the person to make or communicate their own decisions
- Challenge decisions that may not be in the best interests of the person
- An IMCA must be instructed if a decision has to be made about: serious medical treatment;

or a long-term stay in hospital or a care home (long term means longer than 28 days in hospital or eight weeks in a care home);
or a move to a different hospital or care home.

An IMCA *may* be consulted in relation to decisions concerning care reviews or in adult protection cases.

If a decision is needed urgently, it may not be possible or appropriate to instruct an IMCA. If the urgent decision relates to a move of accommodation, an IMCA must be instructed as soon as possible after the move.

It is the local authority or NHS organisation providing the person's care or treatment which is responsible for instructing the IMCA. They must take into account the representations and information provided by the IMCA when deciding what is in the person's best interests.
The IMCA service is only appropriate for people who have no-one else to support or represent them (other than paid staff). If someone has family or friends who are willing to be consulted, or has set up a health and welfare LPA, or has a court appointed deputy, it would not be necessary for an IMCA to be instructed.

4.7 Direct Payments ("DP") and Self-Directed Support ("SDS")

If a service user is in receipt of direct payments or has chosen self directed support, and is commissioning services from an agency provider, the Provider's policies and procedures will apply. If the service user expresses a wish for the care staff not to keep receipts etc, then this will need to be resolved through discussion.

The provider will need to explain their position in terms of CQC requirements and the need to maintain a clear audit trail at all times. The provider should make it clear that this is to safeguard the service user from potential abuse and also to protect the Provider from unsubstantiated allegations.

4.8 A Risk Assessment

A full risk assessment of the Service User's financial management skills should be undertaken by care staff. As with any type of support there may be benefits and risks that need to be carefully managed. Service providers have to understand the risks involved in providing financial support and to manage these to an acceptable level of risk.

Risks may be identified that relate to the mental capacity of the individual. Please see below.

- As part of a detailed support plan, a full risk assessment of the Service User, including all aspects of financial management (known as a financial profile) should be completed.
- For some services, the time scales for completion of the risk assessment are set formally.
- For example, in a residential setting, within 4 weeks of admission the residential home must undertake a risk assessment of the person's money management skills. A risk assessment should confirm the informal and formal financial support arrangements and produce a money management action plan or financial profile as part of the care plan.
- This action plan should not include confidential information about the Service User's bank accounts only information that directly relates to the services role in supporting the person with his/her money or belongings.

- The risk assessment must be reviewed monthly or more frequently if needs change. Inherent in any risk assessment is the individual's mental capacity. If it has not happened beforehand, the risk assessment may identify capacity issues in which case the Provider would be required to complete an **MCA1 Form - see Appendix A** and if necessary this would progress to an **MCA2 - see Appendix B**.
- The Mental Capacity Act states that people are still enabled to make all decisions for which they do have capacity even when they lack the capacity for other more complex decisions. It should not be assumed that someone lacks capacity because he/she makes an unwise decision. Levels of mental capacity can fluctuate and therefore require on-going regular re-assessment in order to ensure that service users are enabled to make all decisions for which they do have capacity. (Informed Consent).

NB: Mental Capacity **assessments are only legitimate at the point in time in which they are conducted.**

4.9 Staff/Employment

Checklist for staff/employment:

- During the recruitment process managers should always request details of employment history and references and ensure that these checks are comprehensively followed up with written evidence.
- Advanced staff CRB checks should be requested, received and cleared before the member of staff undertakes unsupervised tasks with Service Users or has unsupervised access to records.
- Staff employment contracts and handbooks should clearly and comprehensively include expectations around specific areas of operational practice such as witnessing wills, borrowing or lending money and accepting gifts from Service Users.
- Contracts and internal policies must require staff to notify the Provider managers of any new criminal offence occurred whilst in their employment.
- It is imperative that induction procedures include an awareness and understanding of how to support people appropriately with their finances.
- Staff should sign to evidence that policies and procedures have been provided, read and understood and these records stored on the employee's file.
- Training on financial management good practice should be mandatory and encompass all aspects of financial management including internal procedures and processes and current Government policy and legislation. Training attended should also be fully documented on the employee's personal file. Staff should be regularly up-dated by training that reflects current legislation and guidance. Expectations regarding professional and ethical boundaries should be included in staff induction and ongoing training. They should also be discussed and noted within professional practice supervision, staff appraisals, team meetings and handover meetings. At all times staff should be aware of the correct policy and procedures in relation to supporting service users with finances and personal belongings and should act accordingly. CQC guidance on employment matters and staff training should be followed and evidence of this should be documented, collated and held securely for monitoring and audit purposes. Staff should be fully informed of the Provider's complaints process and Adult Safeguarding Procedures. The provider should draw up and make available a

Whistleblowing Policy. Staff should be fully aware of the Provider's Whistleblowing Policy. (See Definition Table)

Safeguarding_Adults_Guidelines

4.10 Staff Supervision

Checklist for staff supervision:

- Supervisors should pre-book supervision sessions on a regular basis.
- Supervision sessions should be recorded and signed records held on staff files.
- Staff supervision sessions should include discussion on financial practices as a matter of course.
- Managers should aim to empower staff to bring any operational concerns to the supervision sessions or immediately to the supervisor if serious.
- Managers should use these sessions as an opportunity to identify gaps in staff knowledge or internal processes.
- If staff are required to record in a log book, supervision is the professional forum for managers to ensure that staff are following procedures correctly.

4.11 Policies and Procedures

The provider should ensure that there are internal policies and procedures in place for staff on how to support Service Users with their finances and possessions.

Checklist for policies and procedures:

These policies and procedures should be:

Easily accessible, clear and comply with current government policy and legislation.

Produced to cover all eventualities.
Communicated to staff by means of formal documentation.

Clear about the requirement for staff to attend mandatory financial management training with attendance and understanding evidenced on staff files.

Must ensure all relevant staff are aware and are familiar with the polices and procedures of Essex County Council's contracts and other commissioning Authorities

Must be compliant with and adhere to contractual obligations with Essex County Council and other commissioning Authorities

Monitored by both internal (provider) and external (Authority/CQC) and open to regular review and amendment as required.

Be available to service users and their representatives in alternative and easy-read formats.

Include information regarding the complaints process and local procedures on safeguarding adults.

Safeguarding_Adults_Guidelines_

4.12 Financial Management

Definition of Financial Management:

Financial Management is a process with a clear audit trail, of managing a
Service User's finances supported by an appropriate policy and practice guidance should include:

Up to date/accurate records for each individual Service User.
Transparent processes for auditing and monitoring.
Clear accountability and responsibility for staff.
Regular management checks to ensure procedures are followed.
A robust reporting procedure so that staff feel confident and supported in escalating concerns, discrepancies or irregularities to managers or other agencies.

The Service User must have a his own bank account ; individuals' money should not be pooled into one account under any circumstances.

4.13 Record-Keeping

Providers must use official letter headed internal documentation (i.e. printed business stationery, displaying company details). This must provide robust records and a clear audit trail.

All transactions must be transparent and evidenced by good record keeping.

Staff should always act in accordance with Data Protection legislation.

Service Users should be provided with agreements/contracts/policy on what to expect in terms of financial management and support from staff. Information for service users and their representatives should be made available in alternative formats such as easy-read.
NB: In domiciliary services the use of triplicate log books is advisable.

Checklist for record - keeping:

- Staff should sign to confirm that they have seen, understood and will adhere to the relevant financial protection procedures for safe handling of Service Users' money and belongings and this record should be placed on the staff members' personal file.
- This will include confirmation of associated training attended.

- Named individual records held for each Service User held on separate files and in the relevant section of the file.
- All individual income and expenditure transactions should be transparent and recorded on the individual's financial record with date and signature.
- **The Service User must have their own bank account ;** individuals' money should not be pooled into one account under any circumstances.
- In residential settings record keeping should include a dated and signed inventory of valuables and possessions.
- All actions and transactions must be fully explained to the Service User.
- A financial transaction log book or record sheet must be officially headed (i.e. printed business stationery displaying company details) and include sections for:
    - Staff member and service user signature
    - Dates
    - Income (cash/cheque/postal order)
    - Cash withdrawals and from what account (bank/building society, etc.)
    - Total of withdrawals
    - Expenditure such as shopping, bills, banked cash, etc.
    - Total expenditure
    - Remaining balance returned to Service User (total income minus total expenditure).
- A withdrawal record i.e. a Third Party Authorisation Form (see Receivership) for cash, cheques or benefits, must be officially headed (i.e. printed business stationery, displaying company details) and include sections for:
    - Name/address of Service User
    - An authorisation section which clearly states the name of carer who is going to withdraw the money, the amount and where from
    - Account number
    - Date
- A section concerning the requirement for the form of ID to be shown at the bank/building society at the time of the transaction
- Signature of service user
- All records must be signed and dated by both the Service User and member of staff and names printed alongside signatures (where a service user cannot sign he/she may be able to make a unique mark),
- If a signature cannot be obtained the reason for this must be stated.
- ☐ Records must be completed in ink.
- Correction fluid should not be used under any circumstances. ☐
- Any corrections must be initialled and dated. ☐
- Records and log books must be clearly chronological i.e. numbered.
- For some services, such as domiciliary care, triplicate records will be necessary, one record for the Provider's file and one for the Service User's file and one remaining in the log book as a staff record.
- Where alterations are necessary these should be signed and dated and marked VOID.
- If errors are made in a log book the page should be marked VOID and must remain in the book.☐
- All completed log books must be returned to a manager before a new one is issued.
- All returned log books should be signed off by a manager.
- When staff leave the service, the manager must ensure that all log books are returned, checked and signed off beforehand.
- Log books should be available at every supervision session.

- Correction fluid should not be used
- Appropriate authority, for example, 3rd party authorisation must be obtained before withdrawing cash on behalf of a service user.
- Official receipts should be kept for all transactions, including cash withdrawals and purchases made on the Service Users' behalf. ☐
- Records should reflect a clear audit trail of income versus expenditure with a resulting accurate balance.
- Financial records must be held securely. ☐
- Records must be available for inspection by the appropriate bodies.
- Records must be accessible to Essex County Council. ☐
- Held accessible/archived in line with CQC guidance.
- Any loss of records must be reported to manager immediately.
- ☐ The immediate line manager/supervisor is expected to check every entry and calculation of transactions.
- The manager must complete random checks of the log books/records periodically throughout the year. ☐
- Managers must maintain records that internal monitoring and auditing of financial records has taken place, as evidence. ☐
- All discrepancies or irregularities should be reported and investigated as soon as identified.

4.14 Storage / Security / Access

Checklist for storage/security/access:

Financial information must all be stored in a safe and secure environment and treated in accordance with the Data Protection Act at all times.
This includes items such as:

- Bank details
- Cheque Books
- Building Society Books
- Cash Cards
- Receipts
- Saving bonds/plans
- Shares
- Certificates
- Members of staff such as key holders who are responsible for access of secure facilities should be clearly identified and aware of their responsibilities.
- Any financial discussions with a Service User should take place in an appropriate and confidential setting and recorded.
- Money and valuables should be held securely in accordance with the service providers' insurance policy. The provider should check the Local Authority's contractual requirements for insurance obligations.
- A Service User within a residential setting who wishes to and has the capacity to manage his/her finances/valuables should be provided with a secure lockable draw/cupboard.

- If cash is held for Service Users it must be accounted for separately for each individual and all transactions recorded.
- A service user should be made aware of access arrangements for monies/belongings held on his/her behalf.

4.15 Obtaining Money on a Service User's Behalf

Staff must always refer to the Service User's support/care plan in order to deliver the appropriate level and type of support required in agreement with the Service User and his/her representatives. (This will have included a Mental Capacity Assessment).

Checklist for obtaining money:

- Appropriate authorisation must always support the process of obtaining money on behalf of a Service User- please refer to Toolkit Section on Receivership for detail.
- Refer to section on record-keeping for detail of records to be kept as part of the process of obtaining money on Service User's behalf
- Witness signatures should be sought when staff are handling a Service User's money on his/her behalf and he/she is unable to sign
- Providers should seek legal advice if there are concerns with their position on appointeeship. For example, if the home owner is asked to be the appointee.

4.16 Administering Money on a Service User's Behalf

Staff must always refer to the care plan and the service commissioned.

Staff must not benefit in any way from completing transactions on behalf of a Service User. Administering money for a Service User will include tasks such as shopping.

Checklist for administering money:

- Staff must always adhere strictly to a Service User's "shopping list" including purchasing specific brands of items as requested.
- Staff must not benefit in any way from any promotional offers such as, "buy one get one free".
- Staff must not use their own loyalty cards when shopping on behalf of a Service User.
- Staff should never hold service user's money personally and all transactions must be completed on the same day.
- With the Service User's agreement and to enable Service User choice, the carer may purchase items such as clothing in a range of colours. The Service User can then choose a colour and the carer can return the unwanted items. Stringent recording of these transactions will be imperative.

4.17 Obtaining Goods and Services on a Service User's Behalf

This occurs when a Service User needs support to obtain goods such as a new washing machine or car or services such as window cleaner or plumber.

Checklist for Goods and Services:

- Staff must adhere to the organisations policy on supporting Service Users with obtaining goods and services.
- Staff must not influence a Service User's decision to use a particular supplier.
- Staff can support a Service User in an appropriate way such as assisting him in obtaining three quotes from accredited suppliers.
- Providing impartial information to the Service User is good practice and can empower decision-making.
- Staff must always report a conflict of interest to a manager who should record and file any discussions and take appropriate action.
- Staff must not, under any circumstances recommend goods or services from family and friends.
- Staff may be asked to purchase lottery tickets, scratch cards or place bets on behalf of a service user. There should be an explicit written agreement between the Service User and the care provider managers that staff will not benefit from any wins in any circumstances. If in any doubt, providers should always seek advice.

4.18 Pet Protection

Where Service Users' bring pets with them into residential care, there needs to be a written agreement about the Service User's responsibility to pay all related pet care costs.

4.19 Outings / Excursions / Holidays

These are occasions where a Service User wishes to take part in activities in the community but will require support from a carer. These activities can empower and notably improve quality of life for the Service User. If applicable the Service User's representatives should be involved in agreeing expenses.

Often physical support and assistance is required to enable a Service User to attend a concert or go on holiday etc

Check list for Outings Excursions and Holidays:

- Providers must have a protocol and recording procedures in place to support this type of circumstance. (refer to record-keeping section)
- The payment of any Carer expenses must be agreed in detail between the Service User and the member of staff and recorded before the activity takes place. As good practice, the Provider may decide to implement a formal sliding scale reporting process for expense levels. For example:
    - Going out to lunch – immediate supervisor.
    - Attending a concert - line manager.
    - Escorting a service user on holiday - senior manager agreement.

- Providers should ensure that they are aware of services which have a weekly allowance available from the funding authority user for these types of activities.

4.20 Safeguarding Service User Belongings

Checklist for Belongings:

- Service User belongings should always be handled with respect.
- When a Service User is taking up a residential / nursing placement the Provider should take a full inventory of belongings which must be held on the Service User's file. This should include furniture.
- When a Service User takes up a place in residential / nursing home, it is good practice to take photographs of unusual / valuable belongings and keep them on the service users file.
- Inventories and photographs should be updated to include new acquisitions.
- Money or valuables deposited in the home for safe-keeping should be noted and this information held on the Service User's file.
- Witness signatures should be sought where staff are handling a Service User's belongings on his / her behalf and he / she is unable to sign.

4.21 Change of Circumstances

This is when there is any change in the Service User's circumstances that will result in a change of financial management support.

The most frequent change in circumstances is likely to be concerned with a change in the Service User's mental capacity.

This will lead to a re-assessment of mental capacity and subsequent alteration to the care plan. Staff should be fully aware of the protocol to follow in these situations and refer the service user on for re-assessment.

Checklist for Change of Circumstances:

Change of Accommodation

- If the Service User is permanently moving to a different service there needs to be a clear and documented handover of financial management responsibilities to the receiving staff. Monies and belongings held should be handed over to the appropriate person. It may be a Deputy or Appointee.
- Receipts and signatures must be obtained for all items / monies transferred to the new provider, recorded and held on file for future audit purposes.
- Financial records showing final balance should be completed.

Admission to Hospital

- The provider should make the Service User's valuables secure.
- If the Service User has an appointee or deputy then the Provider should notify him of the Service User's hospital admission as soon as possible.
- The benefits agency may need to be notified on behalf of the Service User.
- The provider should contact the Authority to arrange for the temporary re-homing of Service User's pets.

Death of Service User

- The provider should inform the Next of Kin.
- If there is no Next of Kin, the Provider should follow the Service User's wishes in making funeral arrangements, if known.
- If family or person of authority makes a request for items such as clothing to be disposed of, the Provider must ensure signed authority is received.
- The Provider should secure the Service User's belongings and reconcile the belongings with the inventory when family/friends collect them; ensuring signatures of next-of-kin are obtained.
- The Provider should follow the agreed financial procedures for release of money and belongings.
- A signed receipt for items returned to the family or person of Authority should be held on file at the care home or property if applicable.
- If the Service User has left a legacy to the home this should be recorded and the Provider should notify the authority.
- If valuables and personal monies are collected by family members they should only be handed over to the person dealing with the deceased's estate.
- Complete financial records showing final balance.

NOTE: The Council has issued separate guidance for their staff – Safeguarding Service Users Finances & Belongings – for situations where a Service User is admitted temporarily or permanently into hospital or residential care and where provisions need to be made to protect their 'movable property' (in line with the Council's responsibilities under section 48 of the National Assistance Act 1948).

4.22 Residential/Nursing Care Weekly Fees, Top-up Fees, Personal Allowance

Weekly Fee Rates

When a Service User is placed into residential or nursing care, the home will provide a clear contract which will be made available to the Service User at the time of the placement.

The contact will clearly state those items which will incur additional costs and the notice period required by the home to apply any changes in the weekly fee rate.

Where services are commissioned via a Local Authority, the home's contract must not conflict with the placing authorities Terms and Conditions.

Third Party Top-up

When residential or nursing care is commissioned via a Local Authority, the residential/nursing care home shall not apply any increase to the weekly fee rate and charge it directly to the service user..

A top-up may only be charged when a THIRD PARTY CONTRACT has been signed and agreed by all relevant parties.

A Top UP will not be charged or paid from a Service Users own money, a Top UP must only be charged and paid direct by a third party such as a family member or friend.

Top Up costs must relate to the additional facilities that can be provided by the care home above the usual preferred rate paid by the Authority.

The Third Party Contract must clearly state the amount of the third party contribution, if an increase shall apply, the anniversary date of an increase and the formula to which the increase shall relate to.

The Personal Allowance

The Service User's personal allowance is a sum of money approved for the purchasing of personal items or services such as hairdressing. Ideally the Service User should decide how he/she wishes to spend this money; however there are occasions when a Service User will not have the mental capacity to carry this out. In these situations the Provider, as part of the care planning process, should find out the Service User's preferences and consider spending the allowance for the benefit of the Service User.

For example, if family have stated that the Service User likes fresh flowers, then these could be reasonably purchased on a regular basis using the allowance. Record keeping principles will apply.

If a service user in a residential care home or nursing home is not spending his/her personal allowance the Provider should look into the situation and if appropriate alert the placing authority.

4.23 Service Users and Benefits

Staff **must not** give benefit advice to service users.

Service Users should, with agreement, always be referred on to the appropriate agency for benefit information.

4.24 Court of Protection and Office of Public Guardian

Court of Protection

The Court of Protection is an office of the Supreme Court. It exists to protect the property and financial affairs of people who are mentally incapable of dealing with their own affairs.

The Court of Protection would become involved if something needed to be done either to protect a Service User's assets or to enable them to be used for his/her benefit.

If the Service User can no longer manage his/her financial affairs (does not have capacity to manage his/her own finances) and has not granted a Lasting Power of Attorney then an application for an Order of the Court may need to be made to the Court of Protection.

The Court of Protection can make a declaration on whether a person has mental capacity to make a particular decision. It may request an assessment of capacity (documented in Essex on Form MCA2) from professionals involved in the care of the Service User to help inform their decision making.
(For -Better Lives, Little Highwoods and Ferguson Close providers should also refer to the Joint Protocol to manage finances on behalf of ECC Court of Protection Deputy Office Reprovision Community Support Clients)
The Office of Public Guardian ("OPG")

This is a government agency which is the administrative arm of the Court of Protection.

It provides regulatory help and support services to those who look after the finances of people who lack capacity. The OPG will keep a register of Lasting Power of Attorney and Enduring Power of Attorney, Supervised Deputies and keep a register of Deputies; it will also investigate any complaints about Attorneys or Deputies.

Guidance Booklets for people supporting Service Users are available on http://www.publicguardian.gov.uk/

4.25 Roles and Duties of Named Individuals Acting on Behalf of the Service User

The role and duties of a Deputy

- A Deputy Order is received from the Court which will set out the extent of the Deputy's powers.
- It can apply to any area in which the person could have acted or made decisions for themselves if they had the capacity to do so.
- Deputy powers might relate to:
    - Finances;
    - Personal welfare, such as giving or withholding consent to medical treatment and/or social care interventions
- Powers given will depend on the needs of the person the Deputy has been appointed to assist and also the Court's decision.
- When acting as Deputy the decisions made can have a major impact on the person who lacks capacity. In order to carry out responsibilities sensitively, responsibly and rigorously.
- The Deputy should always:

- Only make those decisions the he/she is authorised to make by the order of the Court;
- Adhere to the Act's five statutory principles; make decisions in the person's best interests;
- Fulfil the Deputy's duty to apply certain standards of care and skill (a duty of care) when making decisions; and
- Have regard to all relevant guidance in the Code.

- The Office of the Public Guardian expects that a Deputy will keep us informed of any changes in contact details for either the Deputy or the person who lacks capacity.

Note:

The old Court of Protection Short Orders and Receivership Orders are still valid for dealing with the Service Users finances.

4.26 The Roles and Duties of a Family Receiver – Deputy Dealing with Finances

A family member may be dealing with a Service Users finances if he/she does not have capacity.

Checklist for Family Receiver-Deputy dealing with Finances:

- The provider should ensure that a copy of the Court of Protection Order is seen as proof of authority for withdrawals and place a copy of the document on the service users file.
- The provider should liaise with family for personal monies and care home fees.
- Receiver/Deputy may be able to open an account giving authority for withdrawals.
- It is important that details of all credits and debits have a clear description. If cash is given by family member a signed receipt is required for Audit purposes.
- Agrees any purchases with Receiver/Deputy as they will need to report these to the Court.

Check list for the role and duties of a Family Appointee:

- This is the same as above but they only have authority to administer state benefits. If there are any concerns the social worker should be contacted immediately.

Check list for the responsibilities of a Department of Work and Pensions ("DWP") Appointee:

- The Appointee can 'stand in the shoes' of the Service User under the benefit regulations and can sign DWP forms, make appeals and generally deal with the benefits claim as if it were their own. All money collected by the Appointee must be used for the sole benefits of the Service User for whom they are acting.

- The Appointee is responsible for:

- Finding out about the Service Users entitlements and benefits
- Letting people know about any change in the Service User's circumstances
- Arranging for any overpayments to be paid back

Being an Appointee lasts until the Service User is well enough to take control of his/her finances.

Any party (the Service User, the Appointee, or the office dealing with the payments can end the arrangement).

Check List for Lasting Power of Attorney (LPA):

- If a Service User wishes someone to act for him/her now and to be able to continue to act for him/her if he/she should become mentally incapable some time in the future, then he/she should consider an LPA.
- Alternatively he/she can set up an LPA to allow someone to act for them only if he/she becomes mentally incapable of making his/her own decisions.
- LPA's are a new power introduced by the Mental Capacity Act and replace Enduring Powers of Attorney (EPA).
- No new EPA can be set up after the 1st October 2007, but pre-existing ones are still valid.
- A pre-existing EPA can still be registered after the 1st October 2007.
- An LPA is a legal document that appoints one or more people to act for the Service User if in the future the Service User becomes incapable for managing for himself/herself.
- ☐ If more than one person is appointed as holding an LPA (Personal Finance (PF) this may be jointly or independently (severally).
- It must be created while the person has capacity and is capable of understanding the nature and effect of an LPA.

There are two types of LPA:

- A property and affairs LPA – which gives the Attorney authority to make decisions about financial affairs.
- A personal welfare LPA which gives the Attorney authority to make decisions about health care and personal welfare. Information about Personal Welfare LPA is provided in: Court of Protection.
- An important distinction between the two types is that a Property and Affairs LPA can be used by the Attorney even when the Service User still has mental capacity to make his/her own decisions.
- A personal Welfare LPA can only be used once the Service User has lost capacity to make relevant decisions himself.

Checklist for Ordinary Power of Attorney:

- Ordinary Powers of Attorney are created for set periods of time for cases when the Service User (donor) is going abroad or is unable to act for some other reason and wishes someone else to have the authority to act on their behalf.

- An Ordinary Power of Attorney will usually end either at a specified time or upon the request of the Service User (donor) at any time using a Deed of Revocation and will automatically be revoked if the service user loses mental capacity.
- There is no requirement for an Ordinary Power of Attorney to be registered.

4.27 Whistleblowing & Safeguarding Procedures – Protection of Vulnerable Adults

All providers are expected to have a Whistleblowing Policy in place and to furnish staff with the details of the policy.

Checklist for Whistleblowing:

- Whistleblowing is the term given to the formal raising of concerns relating to wrongdoing, impropriety or breach of procedure.
- It could include expectations relating to the handling of money, gifts, hospitality, health and safety issues, equal opportunities, relationships.
- In law, employees are "protected" against unfair dismissal or being subjected to detrimental treatment. "Protected" disclosures are those where, in the reasonable belief of the worker making the disclosure, tend to raise issues of what is happening now, took place in the past, or is likely to happen.
- The whistleblower should raise the matter initially with their line manager - if given verbally, the matter should be confirmed in writing as soon as possible following the discussion.
- If the line manager is implicated in the matter, or having raised the issue an employee believes management have failed to take appropriate action, then it should be raised with a more senior manager.

The whistleblower should be kept informed of progress of the resulting investigation and its outcome.

- If the whistleblower believes fraud, theft or other potential gross misconduct is involved they should report it quickly but without mention to those implicated as that could prejudice investigation.
- Legislation provides protection against fear of recrimination, whether or not the matter is ultimately substantiated.

Checklist for Formal Safeguarding Procedures:

- Providers and staff should be trained to recognise the signs of financial abuse and the action to be taken.
- When things go wrong and there are concerns staff should be fully aware of the formal steps to take and adhere to procedures for highlighting and reporting concerns.
- Staff in all establishments need to be empowered and supported to produce an adult concern alert SETSAF1 (see **Appendix C**) for any issues about a persons care that come to their attention in whatever setting. These concerns could include allegations or statements/disclosures that are made, observations of incidents or injuries etc.
- The purpose of the alert is to bring concerns to the attention of the local team manager, so that the matter can be addressed either through care or case management

or where it is deemed necessary by the receiving team through an adult safeguarding process.

- It is important that individuals that have these concerns refer these directly and swiftly as delays in waiting for management approval or agreement may place service users at greater risk.
- Managers, staff and Service Users must be fully aware of the complaints process, how to instigate the complaints process and then to feel confident that the correct procedures will be followed.

Referrals can be made on the SETSAF1 Form:

(Previously known as Procedures for initiating a Protection of Vulnerable Adult (POVA)), which is sent to Social Services, or verbally by phone to Social Care Direct, who will pass the referral on to the relevant team.

4.28 Internal and External Monitoring Expectations

Introduction

There are service specific standards all organisations providing services to ECC (whether or not they have a contract with the council for this purpose) need to achieve and maintain at all times. Where there is evidence that any Provider is not maintaining these standards, their work with the Council may be suspended or withdrawn, together with any contracts held by the Provider.

As part of their registration with the Care Quality Commission (CQC), Registered Providers must provide documented evidence on most of these standards.

There are other standards which specifically relate to ECC contract requirements, i.e. Practice Guidance for Safeguarding Service Users Finances and Belongings, Whistle Blowing, Medication Policy, Vulnerable Adults, and Service Delivery.

Providers are required to comply with all of the standards including those that relate to finances of Service Users.

The Provider shall keep and maintain full and accurate records including all expenditure reimbursed by ECC, all payments made by ECC and Service User financial expenditure, specifically personal money and their belongings. The Provider must allow ECC or ECC representatives' access to those records to conduct a financial audit or random checks as may be required in connection with contractual Terms and Conditions. The financial auditing process may form part or whole of a planned monitoring visit. Any irregularities in service user financial records will be subject to an investigation.

ECC retain the right to verify any information supplied by Providers with the CQC. This includes subsequent changes to their organisation such as a change of proprietor or manager. Where this is necessary, prior authority will be sought with the Provider.

Where the CQC, impose greater obligations on the Provider than those outlined in this document, the CQC requirements will take precedence over these standards. In all such cases, the ECC standards will be revised to ensure compliance.

For more detail on service specific monitoring requirements please see **Appendix G.**
Good practice guidance

5. Chapter 4

5.1 Reference Material And Resources – Where To Get Help

Helpful links:

Care Quality Commission

Mental Capacity Act 2005

Care Standards Act 2000

Regulation and National Minimum Standards, England

Safeguarding Adults Guidelines

Motability Information

Banking Code

Office of Public Guardian Information

Information on the Mental Health Act

Providers may be able to access Government funding through the Citizens Advice Bureau or Debt Counselling Services for literacy and money skills training. Managers can also get information and support on workforce development by contacting Skills for Care.

Skillsforcare

The Relatives and Residents Association (for Quality of Life of Older people in care) have a Partnership Advice Line (PAL) **020 7359 8136** Monday to Friday 9:30 -4:30.
http://www.relres.org/

Over half the calls to this advice line so far are from people who are moving into care and have concerns about financial issues particularly short falls in fees and third party top ups.

For referral to Social Care Direct call **Contact Essex on: 0845 603 7630**
For referral to F.A.B.A. (Financial Assessment & Benefit Advice) call **Contract Essex on: 0845 603 7630**

Please also refer to Appendices A to G below.

5.2 Definitions

CQC	Care Quality Commission
Direct Payments ("DP")	The individual receives a cash payment in lieu of the social care service that Essex County Council would otherwise arrange for them – This is called a Direct Payment. The individual is then responsible for arranging and securing their own social care services independently of Essex County Council.
Financial Abuse	Financial abuse or material abuse, including theft, fraud exploitation, and pressure in connection with wills, property or inheritance or financial transactions or he/she misuse or misappropriation of property, possessions or benefits. (Department of Heath (2000) No Secrets).
Financial Management	Financial management is a process with a clear audit trail, of managing a Service User's finances supported by an appropriate policy and practice guidance.
Informed Consent	Agreement to do something, or to allow something to happen, only after all the relevant facts are known.
MCA	Mental Capacity Act
SET SAF	Southend, Essex, Thurrock Safeguarding Adult Form
Self Directed Support ("SDS")	A new system of social care which focuses on giving service users much more choice and control over the services they receive – this includes the choice to ask the council or another organisation to hold the budget and arrange services for them.
Whistleblowing	Refers to when a person discloses information, under the Whistleblowers Protection Act 1994 about official misconduct maladministration, negligent or improper management of public funds, reprisal or danger to a person or the environment, in the public interest.
FABA	Financial Assessment and Benefit Advisor
Q & D	Quality and Development Team-Essex County Council

6. APPENDICES

A
Mental Capacity Act
MCA 1 Form

B
Mental Capacity Act
MCA2 Form

C
SET SAF 1

D
Deprivation of Liberty

E
Fraud Act 2006
There are a number of other areas that are not included within this summary which focuses on those issues that are more likely to affect fraud investigations in the public sector.
Section 1 – Fraud
A person is guilty of fraud if he is in breach of any of the Sections listed in subsection 2 (which provide for different ways of committing the offence).
The Sections are:
Section 2-Fraud by false representation
Section 3-Fraud by failing to disclose information Version 3 – January 2010 Review Date: January 2011 47 Section 4-Fraud by abuse of position
Maximum penalty is imprisonment for a term of up to 10 years (note this was previously 7 years).
The Act is effective from 15th January 2007, although it cannot be applied to cases that are under investigation prior to this time.

Section 4 - Fraud by abuse of position

A person is in breach of this Section if he:

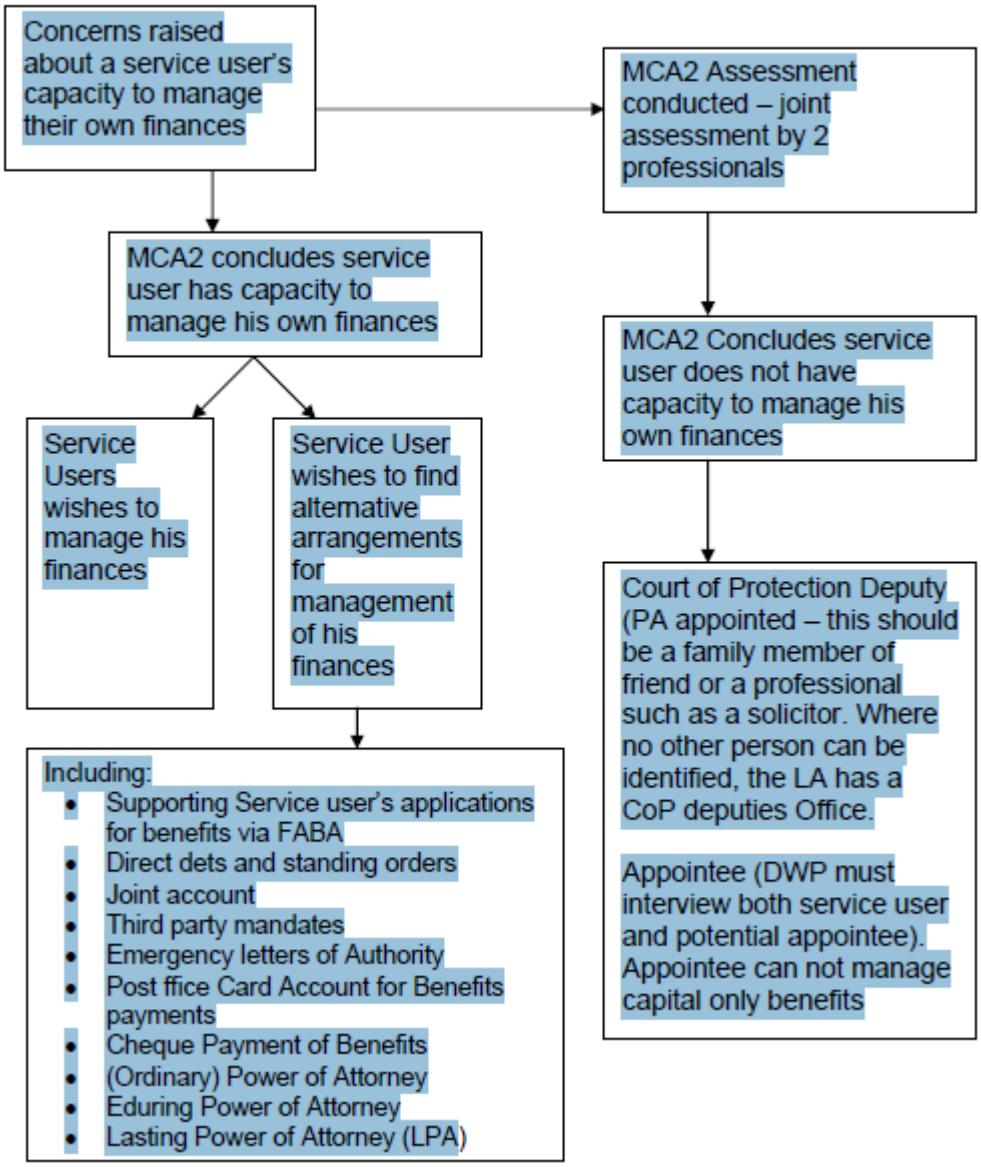
- Occupies a position, in which he is expected to safeguard, or not act against, the financial interests of another person.

- **Dishonestly** abuses that position; and

- Intends, by means of the abuse of that position to make a **gain** for himself or another, or to **cause loss** to another or **expose another to a risk of loss**.

Maximum penalty is imprisonment for a term up to 10 years.

Explanatory Notes
S.4 (2) A person may be regarded a having abused his position even though his conduct consisted of an omission rather than an act.
This offence focuses on those persons who are in positions of financial trust and have insight and possibly control of another's financial situation. There will be some form of relationship or agreement between both parties for the offence to operate: the relationship can be one of client, employee, family, trustee and beneficiary or simple trust. Although the offence focuses on the area of finance of the victim, the actual gain to the offender may not be monetary, although it invariably will be.

The following example is given in the act:
☐Where someone is looking after elderly or vulnerable persons and has access to their bank account and abuses their position by removing money from the account

Capacity & Finance Flowchart