

ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit, Risk and Scrutiny Committee
<b>DATE</b>	14 September 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Internal Audit Report AC2314 – Adults with Incapacity
<b>REPORT NUMBER</b>	IA/AC2314
<b>DIRECTOR</b>	N/A
<b>REPORT AUTHOR</b>	Jamie Dale
<b>TERMS OF REFERENCE</b>	2.2

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**1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to present the planned Internal Audit report on Adults with Incapacity

**2. RECOMMENDATION**

- 2.1 It is recommended that the Committee review, discuss and comment on the issues raised within this report and the attached appendix.

**3. CURRENT SITUATION**

- 3.1 Internal Audit has completed the attached report which relates to an audit of Adults with Incapacity

**4. FINANCIAL IMPLICATIONS**

- 4.1 There are no direct financial implications arising from the recommendations of this report.

**5. LEGAL IMPLICATIONS**

- 5.1 There are no direct legal implications arising from the recommendations of this report.

**6. ENVIRONMENTAL IMPLICATIONS**

- 6.1 There are no direct environmental implications arising from the recommendations of this report.

**7. RISK**

7.1 The Internal Audit process considers risks involved in the areas subject to review. Any risk implications identified through the Internal Audit process are detailed in the resultant Internal Audit reports. Recommendations, consistent with the Council's Risk Appetite Statement, are made to address the identified risks and Internal Audit follows up progress with implementing those that are agreed with management. Those not implemented by their agreed due date are detailed in the attached appendices.

## 8. OUTCOMES

8.1 There are no direct impacts, as a result of this report, in relation to the Council Delivery Plan, or the Local Outcome Improvement Plan Themes of Prosperous Economy, People or Place.

8.2 However, Internal Audit plays a key role in providing assurance over, and helping to improve, the Council's framework of governance, risk management and control. These arrangements, put in place by the Council, help ensure that the Council achieves its strategic objectives in a well-managed and controlled environment.

## 9. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	An assessment is not required because the reason for this report is for Committee to review, discuss and comment on the outcome of an internal audit. As a result, there will be no differential impact, as a result of the proposals in this report, on people with protected characteristics.
Privacy Impact Assessment	Not required

## 10. BACKGROUND PAPERS

10.1 There are no relevant background papers related directly to this report.

## 11. APPENDICES

11.1 Internal Audit report AC2314 – Adults with Incapacity

## 12. REPORT AUTHOR CONTACT DETAILS

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## Internal Audit

### Assurance Review of Adults with Incapacity

**Status:** Final

**Date:** 24 August 2023

**Risk Level:** Cluster

**Report No:** AC2314

**Assurance Year:** 2022-23

Net Risk Rating	Description	Assurance Assessment
Major	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.	Limited

Report Tracking	Planned Date	Actual Date
Scope issued	19-Jan-23	19-Jan-23
Scope agreed	28-Feb-23	28-Feb-23
Fieldwork commenced	24-Mar-23	9-Mar-23
Fieldwork completed	2-May-23	16-May-23
Draft report issued	12-May-23	9-Jun-23
Process owner response	19-May-23	27-Jun-23
Director response	26-May-23	12-Jul-23
Final report issued	2-Jun-23	25-Aug-23
Audit Committee	14-Sep-23 (AR&S) and 19-Sep-23 (IJB RAP)	

Distribution		
Document type	Assurance Report	
Director	Sandra MacLeod, Chief Officer – Health and Social Care Partnership	
Process Owner	Claire Wilson, Chief Officer, Adult Social Work	
Stakeholder	Fraser Bell, Chief Operating Officer – Health and Social Care Partnership	
	Andy MacDonald, Director of Customer Services	
	Steve Whyte, Director of Resources	
	Jonathan Belford, Chief Financial Officer	
	*Final only	Paul Mitchell, Chief Finance Officer – Health and Social Care Partnership
	Katherine Paton, Service Manager	
	Steven Stark, Service Manager	
	Kevin Dawson, Lead for Community Mental Health, Learning Disabilities & Substance Misuse Services	
	Tracey McMillan, Service Manager	
	Nicola McLean, Service Manager	
	Barbara Dunbar, Service Manager	
	Angela Crawford, Finance Control Manager	
	External Audit*	
Lead auditor	Heulwen Beecroft, Auditor	

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# Contents

<b>1</b>	<b>Introduction .....</b>	<b>5</b>
<b>2</b>	<b>Executive Summary .....</b>	<b>7</b>
<b>3</b>	<b>Issues / Risks, Recommendations, and Management Response.....</b>	<b>11</b>
<b>4</b>	<b>Appendix 1 – Assurance Terms and Rating Scales .....</b>	<b>19</b>
<b>5</b>	<b>Appendix 2 – Assurance Scope and Terms of Reference .....</b>	<b>20</b>

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# 1 Introduction

## 1.1 Area subject to review

The Adults with Incapacity (Scotland) Act 2000 provides a framework for safeguarding the welfare and managing the finances of adults (people aged 16 or over) who lack capacity due to mental illness, learning disability, dementia or a related condition, or an inability to communicate.

After due consideration of the supported person's needs and circumstances, the Health and Social Care Partnership can make a request for an assessment of capacity and use a 'Decision-Specific Screening Tool' for guidance as to whether a formal assessment is needed. A GP would then make the Mental Capacity Assessment decision for a patient. Any individual can apply to be welfare guardian. The Chief Social Work Officer of the local council can also apply where no-one else is applying and welfare guardianship is necessary. Any individual can apply to be a financial guardian, including a solicitor or an accountant. The adult's general practitioner (or other doctor) will need to carry out an examination and assessment of the adult in relation to the specific areas of decision-making for which powers are being sought. The other medical report, in the case where incapacity is caused by mental disorder, has to be from a relevant medical practitioner who has been approved under section 22 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

The Adults with Incapacity (Scotland) Act 2000 introduced a system for safeguarding the welfare and managing the finances and property of adults who lack capacity to make some or all decisions for themselves. It is underpinned by principles which anyone taking action under the Act must apply when deciding which measure will be the 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.

- Principle 1 – Benefit: any action or decision taken must benefit the person and only be taken when that benefit cannot reasonably be achieved without it.
- Principle 2 – Least restrictive option: any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.
- 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 must be taken of the present and past wishes and feelings of the person, as far as they can be ascertained. The adult should be offered appropriate assistance to communicate their views.
- 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, the adult's named person, any guardian or attorney with powers relating to the proposed intervention, and any person whom the Sheriff has directed should be consulted, in so far as it is reasonable and practicable to do so.
- Principle 5 – Encourage the person to use existing skills and develop new skills: Any guardian, attorney, or manager of an establishment exercising functions under the Act shall in so far as it is reasonable and practicable to do so, encourage the adult to exercise whatever skills he or she has concerning property, financial affairs or personal welfare as the case may be and to develop new such skills.

The different interventions under The Adults with Incapacity (Scotland) Act 2000 are:

- Power of attorney – This must be registered with the Office of the Public Guardian and is where individuals whilst they have capacity can grant someone to act as their continuing, financial and / or welfare attorney.
- Access to Funds scheme – Applied for through the Office of the Public Guardian, allows access to the adult's bank or building society account to meet living costs. An application can be made by an individual or an organisation.
- Guardianship – Granted by the Sheriff Court, can cover property and financial matters or personal welfare.
- Intervention order – Granted by the Sheriff Court, is suitable where there is a single action or decision to be taken on behalf of the adult.

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DWP appointeeship may be applied for in cases where the only funds available are state benefits / state pension, without a requirement to apply for separate Access to Funds. This is a separate type of intervention, not explicitly covered by the Act, governed by Department of Work and Pensions guidance and policy.

Part 4 of the Adults with Incapacity (Scotland) Act 2000 covers adults who live in authorised establishments (including care homes) who lack the capacity to manage their financial affairs. It provides a mechanism for managers of those establishments to manage finances on the adult's behalf. Part 4 is most likely to be used for residents with relatively small amounts of money who have no one else to lawfully manage their financial affairs. It covers resident's free assets and income and other moveable property to which they are entitled.

Due to limitations with our previous recording systems, statistical information regarding AWI figures could not be digitally obtained. However, these figures were recorded manually on a spreadsheet which gave the Health and Social Care Partnership oversight of all AWI cases in the city. There are 356 service users recorded as having ongoing funds management by the Service, including 354 who have Corporate Appointeeship, and two who have Access to Funds arrangements. The number of individuals for whom intervention agreements have been made and the number for whom the Council oversees power or attorney arrangements is not readily available from the service. The value of funds managed on behalf of Corporate Appointees is £4m, whilst for Access to funds the amounts were approximately £70k.

The Partnership also has a duty to supervise welfare guardians, including review of arrangements, provision of advice and information, and investigating complaints.

## **1.2 Rationale for the review**

The objective of this audit is to ensure that there are evidence-based controls in place regarding funds managed on behalf of clients.

The area has not been reviewed in detail by Internal Audit, however in 2022 as part of an audit of Learning Disabilities services, report number AC2210, some variation in practice was identified, and a need for additional support for staff involved in managing funds to ensure consistency. New procedures and forms were developed to address this within the Learning Disabilities service area.

There is substantial scope for fraud and error where funds and moveable property are being accessed and managed on others' behalf. There are risks to vulnerable service users' funds, and to staff involved in the management of their funds, if appropriate procedures, checks, and balances are not in place and operating effectively.

The Service is accountable to the Care Inspectorate for the proper application of various parts of the Act, however this forms only part of any review of individual establishments, primarily focusing on care delivery. The service is also accountable to the Office of the Public Guardian, Mental Welfare Commission and the Department of Work and Pensions.

## **1.3 How to use this report**

This report has several sections and is designed for different stakeholders. The executive summary (section 2) is designed for senior staff and is cross referenced to the more detailed narrative in later sections (3 onwards) of the report should the reader require it. Section 3 contains the detailed narrative for risks and issues we identified in our work.

## 2 Executive Summary

### 2.1 Overall opinion

The full chart of net risk and assurance assessment definitions can be found in Appendix 1 – Assurance Scope and Terms on page 16. We have assessed the net risk (risk arising after controls and risk mitigation actions have been applied) as:

Net Risk Rating	Description	Assurance Assessment
Major	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.	Limited

The organisational risk level at which this risk assessment applies is:

Risk Level	Definition
Cluster	This issue / risk level impacts at the Business Plan level (i.e. individual services or departments as a whole). Mitigating actions should be implemented by the responsible Chief Officer.

### 2.2 Assurance assessment

Internal audit has identified an overall net risk rating of **MAJOR**, with **LIMITED** assurance obtained over this area.

Areas of controls are in development but have yet to be fully implemented. Efficiency is partly affected by ongoing development following the introduction of a new care management recording system – with specific service areas still identifying what needs to be recorded in the system. Procedures in respect of appointeeship, access to funds, financial guardianship and intervention are out of date and there is no evidence of review to ensure they are relevant and tried and tested for sufficiency. Reliance is largely placed on legislation and other high-level guidance, rather than locally relevant procedures and training. As a result, inconsistent practice was identified during the audit.

Records are not always accessible, and the lack of clarity over procedure results in inconsistent filing, recording, and annotation of records. Some records are not on file, including legal documentation, certification of incapacity, and intended use of funds. Where changes take place, records are not consistently being updated to reflect changes. System records are incomplete. This presents risks to service delivery, and to the need to keep accurate data in compliance with data protection legislation. Where records are in place these do not always demonstrate adherence to the minimum intervention principle set out in the Adults with Incapacity (Scotland) Act.

Whilst there are controls over funds received into and distributed from a centralised corporate appointee account, these funds are regularly withdrawn in cash, and a number of weaknesses were identified including an absence of checks, authorisation controls, and evidenced segregation of duties. Following withdrawals there is limited evidence of management of service users' assets. Funds are generally managed by care workers, and their activities in respect of AWI finances are not subject to regular independent review. Supporting evidence in respect of client funds management is limited and is not being reviewed and investigated where there are potential irregularities; this includes an absence of clear plans for spending, and records of use of funds, and changes from confirmed benefit entitlements. Inventories are not routinely maintained or updated, and financial assets in excess of relevant thresholds are not considered for separate management (e.g. in interest bearing accounts).

The lack of control over this area means that there is substantial scope for fraud and error where funds and moveable property are being accessed and managed on others' behalf. Whilst no evidence of recent fraud or theft was identified in the audit, current controls may not prevent or identify it. There are risks to vulnerable service users' funds, and to staff involved in the management of their funds, if appropriate procedures, checks, and balances are not in place and operating effectively.

Recommendations have been made to address the above risks, which Management has agreed to as part of a timebound action plan. This was discussed with Internal Audit and it considered to be

proportionate in the wider context of ongoing work and recognising the need to consider flexibility and efficiency as well as control.

### 2.3 Severe or major issues / risks

Issues and risks identified are categorised according to their impact on the Council. The following are summaries of higher rated issues / risks that have been identified as part of this review:

Ref	Severe or Major Issues / Risks	Risk Agreed	Risk Rating	Page No.
1.1	<p><b>Written Procedures and Training</b> – Procedures, although out of date, are available to assist with aspects of the service. However, within the available procedures or signposted guidance there is insufficient detail in respect of practical application and management of arrangements for Adults with Incapacity, particularly in respect of Records and Funds Management. There was no practical documented guidance or training covering day to day management of funds or assets on behalf of service users.</p> <p>As a result, inconsistent practice was identified during the audit, as noted in the latter elements of this report. This presents risks including fraud, reputational risk and the cost of investigation and rework / corrections.</p>	Y	Major	11
1.2	<p><b>Complete and Consistent Records</b> – Documentation to verify client classifications is essential to demonstrate that any interventions are appropriate and are being managed correctly. However, client documents are not held consistently or consolidated in an accessible location. There is no complete central record of all AWI service users, interventions, and activities. Varying records were held by Finance, The Financial Assessments team, Adult Mental Health Administration, Care Managers / Social workers, and Care Practitioners, each with different sets of service users recorded as in receipt of AWI support. Records varied between and within systems, reports, lists and shared hard drives. Classification of the type of intervention on the care management system also varied, and records were incomplete.</p> <p>There is therefore a risk, particularly where there are changes in staffing, that important information will not be available when it is required. Inaccuracies in the data reduce the assurance the Service can obtain from system reports, that all adults with incapacity</p>	Y	Major	12

Ref	Severe or Major Issues / Risks	Risk Agreed	Risk Rating	Page No.
	have appropriate interventions in place. The UK General Data Protection Regulation (GDPR) includes data accuracy as one of its seven key principles. There is a risk therefore of the Council breaching legislative requirements in this regard.			
1.3	<p><b>Minimum Intervention</b> – In contrast to Council and DWP guidance, and the ‘minimum intervention’ principle set out in the Adults with Incapacity (Scotland) Act, corporate appointeeships are in place in cases where incapacity has not been specifically determined by a medical practitioner. This includes cases where clients had other bank accounts – indicating that other funds, and the means or capacity to manage them, are in place.</p> <p>There was no indication of review by another officer prior to submission and processing of requests to manage DWP benefits on service users’ behalf – limiting assurance that interventions have been appropriately assessed as necessary.</p>	Y	Major	14
1.4	<p><b>Financial Controls</b> – Where financial interventions are appropriate and necessary, these need to be suitably controlled in order to satisfy local ACHSCP and national requirements, to protect vulnerable service users and their finances, and to protect staff responsible for their management. Whilst there are controls over funds in the corporate appointee account, weaknesses were identified including an absence of checks, authorisation controls and evidenced segregation of duties.</p> <p>Cash transactions present increased risk due to its portability, desirability, and the absence of an audit trail after it has been released. In the absence of appropriate controls, funds may be at increased risk of loss through fraud or error.</p>	Y	Major	15
1.5	<p><b>Funds Management Records</b> – Supporting evidence in respect of client funds management is poor. There are no records of routine review to identify any irregularities for further review. In the absence of detailed and verified records and independent checks there is a risk that funds will not be utilised as planned or may be subject to misuse – resulting in financial loss, or a</p>	Y	Major	17

Ref	Severe or Major Issues / Risks	Risk Agreed	Risk Rating	Page No.
	perception that this may be the case – resulting in reputational damage.			

## 2.4 Management response

*The Services welcome the improvements identified by the Internal Audit team. It recognises and acknowledges that there is a requirement to strengthen and streamline the exiting processes to ensure consistency and good practice across the service and to mitigate risk. Although there is a need to update processes and procedures, it is noted that controls in place ensured no material financial loss was identified. Furthermore, all service objectives were met in relation to service delivery which puts support for people at the centre. The services have implemented a short life working group including representatives from across adult services to take forward a comprehensive action plan. Sub-groups will be tasked with addressing the recommendations from each section. The short life working group will continually review the action plan to ensure the balance of appropriate controls are in place whilst allowing flexibility in the processes which meets the varied needs of service users. This is vital in enabling choice and control by service users as outlined in the Health & Social Care Standards and that service users are not negatively impacted. Updates to guidance and training are also in progress and will be further reviewed prior to implementation to ensure areas of improvement highlighted in the audit report are addressed. All timescales identified below for completion of the actions take are considered to be proportionate with regard to the level of risk. This work will be overseen by the Process Owner.*

## 3 Issues / Risks, Recommendations, and Management Response

### 3.1 Issues / Risks, recommendations, and management response

Ref	Description	Risk Rating	Major
1.1	<p><b>Written Procedures and Training</b> – Procedures, although out of date, are available to assist with aspects of the service. Guidance was produced over eight years ago for staff managing service users’ monies under Corporate Appointeeship, Access to Funds arrangements and intervention. In the intervening period, systems and practice have changed – including implementation of a new care management system. Guidance for dealing with service users subject to Power of Attorney arrangements was out of date. Procedures from Payments control (Finance) for new Appointee requests were not dated. Government websites were referenced for specialist guidance and legislative requirements. AWI training was not formal or overseen by managers.</p> <p>Procedures and financial training were under development for D365, which had replaced CareFirst, which had been decommissioned and last updated in October 2022. Staff knowledge and training was limited to key individuals for information and understanding of the corporate appointee database, bank account and the reconciliation, access to funds process and access to the DWP website.</p> <p>Some processes may be inefficient; inordinate delays were identified in respect of setting up Access to Funds arrangements. In the majority of cases for which records were available, clients were either deceased or needs had been met in other ways before arrangements were concluded (DWP funds were used in the interim, and financial guardianship set up instead). Whilst one had died within a month of the request, for the others correspondence was four, 10, 13 and 15 months after the initial requests. Delays present a risk to meeting client needs, and to the Council’s reputation.</p> <p>Within the available procedures or signposted guidance there is insufficient detail in respect of practical application and management of arrangements for Adults with Incapacity, particularly in respect of Records and Funds Management. There was no practical documented guidance covering day to day management of funds or assets on behalf of service users.</p> <p>As a result, inconsistent practice was identified during the audit, as noted in the latter elements of this report. This presents risks including fraud, reputational risk and the cost of investigation and rework / corrections.</p>		
<b>IA Recommended Mitigating Actions</b>			
<p>The Service should document and implement procedures in respect of DWP appointeeship, Intervention Orders, Access to funds, guardianship and POA in dealing with Adults with Incapacity. The Service should ensure these are clear, efficient, provide practical guidance on day-to-day management of funds, and are subject to periodic recorded reviews. Staff required to apply the procedures should be adequately trained in their application.</p> <p>The Service should develop AWI staff training and procedures for key systems, D365, the corporate appointee database, access to funds process, DWP website to provide adequate cover so that key information required can be accessed and audit trails completed for client information stored.</p>			
<b>Management Actions to Address Issues/Risks</b>			
<p><i>Agreed. Updates are in progress. Revised corporate appointeeship guidance is being updated in consultation with legal services. Procedures and guidance will be reviewed by a short life working group in consultation with colleagues across adult services, Finance, the Financial Inclusion Team, and DWP as appropriate. Thereafter procedures will be updated,</i></p>			

Ref	Description	Risk Rating	Major
	<i>and rolled out, including clarification of responsibilities and duties, step by step guides, and training. Mandatory training completion will be monitored by senior management, and financial training will be included in induction processes.</i>		
	<b>Risk Agreed</b>	<b>Person(s)</b>	<b>Due Date</b>
	Yes	Chief Officer (Adult Social Work)	January 2024

Ref	Description	Risk Rating	Major
1.2	<p><b>Complete and Consistent Records</b> – Documentation to verify client classifications is essential to demonstrate that any interventions are appropriate and are being managed correctly. However, client documents are not held consistently or consolidated in an accessible location. There is no complete central record of all AWI service users, interventions, and activities. Varying records were held by Payments Control (Finance), the Financial Assistance team, Adult Mental Health Administration, Care Managers / Social workers, and Care Practitioners, each with different sets of service users recorded as in receipt of AWI support. Records varied between and within systems, reports, lists and shared drives. Classification of the type of intervention on the care management system also varied.</p> <p>Specific examples with regards to the incompleteness and inconsistency of records include:</p> <p>Finance records:</p> <ul style="list-style-type: none"> <li>• Finance records of care staff were incorrect in seven out of ten cases reviewed (70%).</li> <li>• Two of 13 clients (15%) had passed away (one three months, the other 16 months previously) and this had not been updated in Finance records.</li> <li>• Three of nine Appointeeship files (33%) did not include a copy of the BF56 DWP Appointee application form.</li> <li>• Five of nine Appointeeship files (56%) did not include a copy of the BF57 DWP confirmation of formal appointment to act on the claimant's behalf. The Service indicated these are not always received back, in contrast to the DWP website stating that you are not formally an appointee until receipt.</li> <li>• Although Finance had a record of the names of 'pre-active' Access to Funds clients, files had not been set up for each, and in the cases where files were available changes and delays in notification were not reflected timeously.</li> </ul> <p>Care system records:</p> <ul style="list-style-type: none"> <li>• In nine of 16 cases reviewed (56%), clients were not correctly recorded as an 'Adult with Incapacity' on D365 in the correct field or with relevant dates.</li> <li>• Four of nine client's records (44%) for cases which included both Adult with Incapacity and DWP Appointeeship did not have the relevant legal classifications recorded on D365. For one client DWP appointeeship was mentioned in the notes rather than a classification.</li> <li>• Two clients for whom Access to Funds arrangements were in place (100%), and three of six (50%) for whom arrangements were being put in place, did not have an 'Adult with Incapacity' legal status recorded on D365; and there were also no specific case notes to this effect.</li> <li>• There was no record of the care managers who had been responsible for two deceased clients.</li> </ul>		

Ref	Description	Risk Rating	Major
	<ul style="list-style-type: none"> <li>• One 55 year old service user was recorded as being under the care of Children’s Services.</li> <li>• For seven of 15 guardianship cases (47%), Service records maintained on a spreadsheet indicated different care managers from those recorded on D365.</li> <li>• D365 records in respect of two of five clients with previous local authority financial guardianships (40%) recorded this under ‘cases’ rather than ‘legal status’.</li> <li>• For those with current guardianship arrangements, eight of 15 (53%) did not have a matching ‘legal status’ on the system. This was however reflected in ‘cases’ in four instances, and ‘alerts’ in three instances.</li> <li>• In one local authority financial guardianship case the intervention order had lapsed, and this was not reflected on D365.</li> <li>• Whilst all of three clients for whom Power of Attorney was in place had a record of this on D365, only two of these had an ‘Adult with Incapacity’ legal status.</li> <li>• Although in each of the six cases reviewed where there had been an Intervention Order, there was an ‘Adult with Incapacity’ legal status on D365, there was no record, case or alert specifically recording the interventions.</li> </ul> <p>Care management files:</p> <ul style="list-style-type: none"> <li>• All nine appointeeship clients records reviewed (100%) were incomplete in respect of key documents and classifications.</li> <li>• Four of nine initial requests for appointeeship were not on file (44%).</li> <li>• Only three of six Appointeeship files (50%) contained supporting detail of the service users’ lack of capacity. Only one of these included medical certification, with the other two relying on social work appointee request documents alone.</li> <li>• One of two Access to Funds clients, and a further three of six ‘pre-active’ clients for whom arrangements were being put in place (50%), had no medical certification on file to confirm their incapacity had been appropriately assessed.</li> <li>• One of seven local authority financial guardianships (14%) had no medical certification on file.</li> <li>• Service spreadsheet records in respect of welfare and financial guardianships indicated that many had expired, and there was no indication of review or follow-up either in these records or on the system.</li> <li>• The amount of funds requested in an Access to Funds application was incorrect due to a transposition error (£1,975 instead of £1,795) which was not identified.</li> </ul> <p>As highlighted above, there are variations in how, where and whether core records and information are recorded. There is therefore a risk, particularly where there are changes in staffing, that important information will not be available when it is required. Inaccuracies in the data reduce the assurance the Service can obtain from system reports, that all adults with incapacity have appropriate interventions in place. Whilst some assurance can be obtained through external controls – e.g. DWP and OPG checks prior to allowing access to funds, these are reliant on accurate information being provided by the Council. The UK General Data Protection Regulation (GDPR) includes data accuracy as one of its seven key principles. There is a risk therefore of the Council breaching legislative requirements in this regard.</p> <p><b>IA Recommended Mitigating Actions</b></p> <p>The Service should implement processes and controls to ensure consistent and complete AWI records are held in line with the GDPR accuracy principle, and these are accessible to relevant officers to avoid the risk of duplication and misalignment.</p> <p>A reconciliation of existing file records against new system records should be undertaken, and corrections applied where necessary.</p>		

Ref	Description	Risk Rating	Major
	A system of review should be developed and implemented to obtain regular periodic assurance over the content and accuracy of AWI funds management records.		
<b>Management Actions to Address Issues/Risks</b>			
<i>Agreed. We will review options to modernise and streamline the approach, and improve access to and alignment of financial and care data to improve scrutiny. As part of this we will review utilisation of D365 more succinctly – for example classifications, record keeping, storage of documents etc. We will incorporate review of AWI records into the existing QA process and include finance, including corporate appointee accounts where these are in place.</i>			
<b>Risk Agreed</b>		<b>Person(s)</b>	<b>Due Date</b>
Yes		Chief Officer (Adult Social Work)	April 2024

Ref	Description	Risk Rating	Major
1.3	<p><b>Minimum Intervention</b> – The Council’s Finance procedure for Appointeeship clearly sets out that in line with DWP guidelines:</p> <p><i>“An appointment must never be made because it is ‘convenient’ either for the Secretary of State or the prospective appointee. The customer must, because of mental incapacity (or, exceptionally, severe physical disability), be incapable of managing their affairs” (Agents, Appointees, Attorneys and Deputies Guide September 2011 <a href="http://www.gov.uk">www.gov.uk</a>)</i></p> <p>The referenced document is no longer available, however current DWP guidance on becoming an appointee similarly states:</p> <p><i>“You can apply for the right to deal with the benefits of someone who cannot manage their own affairs because they’re mentally incapable or severely disabled.”</i></p> <p>In contrast, as noted at 1.2 above corporate appointeeships are in place in cases where incapacity has not been specifically determined by a medical practitioner. In the two cases reviewed where social work appointee request documents were on file, the narrative indicated that the individuals were not mentally incapable – they were at risk of financial abuse or of getting into debt. There was no indication of review by another officer prior to their submission to Finance and arrangements being set up to manage DWP benefits on their behalf. Further cases were noted during review of transactions where transfers were to clients’ other bank accounts – indicating that other funds, and the means or capacity to manage them, are in place.</p> <p>This contrasts with the minimum intervention principle set out in the Adults with Incapacity (Scotland) Act. There is also a risk that resources are not being used efficiently, by implementing potentially unnecessary interventions.</p>		
<b>IA Recommended Mitigating Actions</b>			
The Service should review the appointeeship process to ensure it reflects the requirements of the scheme, and minimises intervention where possible. As part of the review the Service should ensure all interventions are subject to secondary review to ensure they are appropriate in line with policy and procedure in advance of their implementation.			
<b>Management Actions to Address Issues/Risks</b>			
<i>Agreed in terms of review of cases to ensure correct decision making whilst allowing principles of public protection and care standards.</i>			

Ref	Description	Risk Rating	Major
	<p><i>Social Workers can assess someone as lacking capacity using a variety of assessment tools. Therefore, this is not solely determined by a medical practitioner. Transfers to the corporate client account is often carried out as a way of allowing as much independence as possible for the client – but still keeping safeguards in place that they don't have access to all their money at once. Access to large amounts of money all at once can be difficult for some individuals and may lead to them spending it in a manner which may indirectly create risks. Transferring smaller amounts of money into an account enables and empowers individuals to still have a role in the management and expenditure of their money safely. This is in keeping with the principles of the Health and Social Care Standards.</i></p> <p><i>However, it is recognised that improvements can be made to further clarify guidance, ensure appropriate delegations are in place, and to ensure any agreed interventions are reviewed and remain appropriate as part of the QA process.</i></p>		
	<b>Risk Agreed</b>	<b>Person(s)</b>	<b>Due Date</b>
	Yes.	Chief Officer (Adult Social Work) and Finance Control Manager	March 2024

Ref	Description	Risk Rating	Major
1.4	<p><b>Financial Controls</b> – Where financial interventions are appropriate and necessary, these need to be suitably controlled in order to satisfy local ACHSCP and national requirements, to protect vulnerable service users and their finances, and to protect staff responsible for their management. Whilst there are controls over funds in the corporate appointee account, a number of weaknesses were identified:</p> <p>Cash withdrawals:</p> <ul style="list-style-type: none"> <li>• When funds are required, a social worker will complete a 'social work appointee – client withdrawal request' and submit this to Finance. There are no secondary authorisation controls, and Finance does not have a list of authorised signatories to confirm the request has come from an approved source with appropriate delegated authority.</li> <li>• Funds are taken from the safe and put in envelopes, with the client name, date, and amount recorded on the front. These are taken to a public reception area, held and distributed to social workers, clients, or carers (including third-party staff and family members), nominated to collect them for each service user.</li> <li>• The amounts prepared for collection are recorded on a spreadsheet used for reconciling the safe balance, but this is not updated for each movement from the safe, or each collection from reception. If funds or envelopes were to go missing, it may not be identified until sometime later.</li> <li>• Identity documents are only checked for new visitors. A receipt should be signed by the recipient and issuer of funds, but there are no recorded checks to confirm these matches the originally nominated recipient. The receipting process was not documented as an official part of the paperwork.</li> <li>• A sample of ten receipts was reviewed, and in seven cases (70%) the signatures did not clearly match the nominated recipient name. Five were different names, and the Service was able to retrospectively confirm that this was appropriate in two cases. Two were insufficiently clear to confirm it was the intended recipient. There is no field on the receipt to record the name of the individual collecting the funds.</li> <li>• Payments are also made by BACS from the corporate bank account to individuals and suppliers on clients' behalf, but as with cash payments these are not subject to control checks. Historically, an incorrect BACS payment was made as a result of</li> </ul>		

Ref	Description	Risk Rating	Major
	<p>mandate fraud. Whilst awareness was raised, internal controls were not revisited subsequent to this incident for improvement.</p> <p>Banking and reconciliations:</p> <ul style="list-style-type: none"> <li>• A reconciliation of the corporate appointee bank statement to database records was under development. At the time of the audit fieldwork, funds did not fully reconcile: £65,000 of differences (1.4%), some potentially dating back to 2013 when the last full reconciliation had been completed, had still to be reviewed and actions recorded. The bank balance included money not allocated to clients due to lack of client identification, information from DWP payments and from payments of funds into the account via a bank branch.</li> <li>• Finance relies on correct information from social workers regarding changes to client account information, and correct and timely information from the bank and DWP to resolve the differences.</li> <li>• In one instance funds had been taken in error from the appointee account for an 'access to funds' client. Whilst the Service is aware of the error, the funds had not been correctly recovered three months later.</li> <li>• The corporate bank account contained funds of clients who were deceased, with no next of kin, whose money needed to be identified and returned to the Crown.</li> </ul> <p>Cash transactions present increased risk due to its portability, desirability, and the absence of an audit trail after it has been released. In the absence of appropriate controls, funds may be at increased risk of loss through fraud or error.</p>		
<b>IA Recommended Mitigating Actions</b>			
<p>All requests for funds and payments should have clearly documented review and approval before funds are released. Segregation of duties should be in place for each stage.</p> <p>The identity of funds recipients should be verified and documented. Variations should be subject to approval.</p> <p>All funds movements and transfers should be documented and countersigned at the point such movements take place, with such documentation held separately from the physical funds.</p> <p>Consideration should be given to whether collecting and distributing cash remains the most appropriate means of providing support to individuals.</p> <p>The bank reconciliation to the corporate appointee database should be regularly completed, reviewed, and actions approved and monitored to conclusion.</p> <p>Accounts of deceased clients that are still active should be reviewed for necessary actions to close.</p>			
<b>Management Actions to Address Issues/Risks</b>			
<p><i>Agreed however there is a need to consider flexibility and efficiency as well as control, and there may be scope for variation in line with the volume and value of transactions. The short life working group will review and ensure implementation of appropriate controls in line with the recommendations above whilst maintaining flexibility for the service user. Cash transactions will however remain if that is what is in the interest of the service user</i></p>			
<b>Risk Agreed</b>	<b>Person(s)</b>	<b>Due Date</b>	
Yes.	Finance Control Manager (or representative)	May 2024	

Ref	Description	Risk Rating	Major
1.5	<p><b>Funds Management Records</b> – Clear, consistent, and complete records of planned and actual income and expenditure are essential in providing assurance over appropriate stewardship of client funds. This is especially important in this service area given these clients lack capacity to review their financial activity. As appointees, staff are responsible for spending the benefit in the claimant’s best interests.</p> <p>To provide assurance funds are being obtained for an appropriate reason it should be clearly recorded what funds will be used for – e.g. the types of expenditure that may be incurred to support and benefit the service user. There should also be records of expected income (e.g. pensions, benefits), and expenditure (e.g. care fees, regular payments, allowances etc). Actual income and expenditure can then be compared against these to ensure they are appropriate and reasonable.</p> <p>However, in the majority of cases for which records were available this was not the case. In five out of six cases (83%) where information was available amounts withdrawn were described as personal allowance or for clothes, food, and household items. With limited exceptions (e.g. where a third party care establishment maintained its own records) there is no record thereafter of how funds have been used to meet the service users’ needs. There is currently no specified threshold for management review of larger withdrawals.</p> <p>An inventory should be held of clients’ physical assets and updated when items are bought or sold to reduce risk of missing items whilst in the care of ACHSCP staff. With limited exceptions (e.g. where a third party care establishment maintained its own records) a formal record of inventory was not taking place. As appointees, staff are responsible for spending the benefit in the claimant’s best interests and a spending plan, with receipts and associated inventory would provide assurance over this. For example, in one instance a receipt had been retained for a £199 watch – however this was not on an inventory and the receipt was in the name of a member of care home staff. Clients’ funds could be spent on items for the benefit of others if there is no available documentation to verify who owns the item.</p> <p>Client balances and transactions were available on request from Finance, however as noted at 1.4 above these may not be up to date pending reconciliations being completed and corrections applied. Not all social workers were requesting and reviewing balance and transaction detail routinely so that any irregularities can be reviewed. Although there are annual reviews, the requirements in respect of financial review are not set out in a written procedure, resulting in variations in practice.</p> <p>In the absence of detailed and verified records and independent checks there is a risk that funds will not be utilised as planned or may be subject to misuse – resulting in financial loss, or a perception that this may be the case – resulting in reputational damage</p>		
<b>IA Recommended Mitigating Actions</b>			
<p>The Service should ensure there is a clear and consistent audit trail for all instances where funds are managed on behalf of service users. This should be subject to periodic reconciliation against other records (e.g. bank statements, cash balances, inventories, DWP data and other source documentation), and potential discrepancies escalated and the results and actions recorded.</p>			
<b>Management Actions to Address Issues/Risks</b>			
<p><i>Agreed. There will be a review of our audit trail where money is requested, stored, and distributed. Segregation of duties will be covered by a new guidance note.</i></p> <p><i>As noted at 1.2 above we will review options to modernise and streamline the approach and improve access to and alignment of financial and care data to improve scrutiny. As part of this we will review utilisation of D365 more succinctly – for example classifications, record keeping, storage of documents etc. We will incorporate review of AWI records into the existing QA process and include finance, including corporate appointee accounts where</i></p>			

Ref	Description	Risk Rating	Major
	<i>these are in place. Again, there does need to be some flexibility in terms of a spending plan as being too prescriptive takes away choice and control of the service user.</i>		
	<b>Risk Agreed</b>	<b>Risk Agreed</b>	<b>Risk Agreed</b>
	Yes.	Service Manager Mental Health and Substance Misuse	February 2024

Ref	Description	Risk Rating	Moderate
1.6	<p><b>Management of Financial Assets</b> – Part 4 of the Adults with Incapacity Scotland Act 2000 contains a useful reference to financial thresholds for management of funds. It indicates that care home managers should not manage client finances of over £10,000. Amounts over this should be supervised by the Care Inspectorate and appropriately invested for the adult's benefit.</p> <p>Within the sample of cases reviewed by Internal Audit three client account balances were in excess of this threshold. The Service's ability to act in these cases is restricted, as the funds are currently managed under DWP appointeeship in a corporate account, which did not attract interest for any client and incurs charges, and access to funds.</p> <p>However, these balances represent a higher risk of fraud or error, and if they are not earning interest may be eroded, limiting the potential for service users to benefit from them, and potentially the amounts which they could contribute towards their care. These balances could also indicate alternative interventions may be more suitable.</p>		
	<b>IA Recommended Mitigating Actions</b>		
	The Service should ensure client accounts with balances in excess of specified thresholds are reviewed to ensure they are managed appropriately.		
	<b>Management Actions to Address Issues/Risks</b>		
	<i>Agreed. We will introduce processes for early identification if funds are reaching the financial threshold.</i>		
	<b>Risk Agreed</b>	<b>Person(s)</b>	<b>Due Date</b>
	Yes	Finance Control Manager	January 2024

## 4 Appendix 1 – Assurance Terms and Rating Scales

### 4.1 Overall report level and net risk rating definitions

The following levels and ratings will be used to assess the risk in this report:

Risk level	Definition
<b>Corporate</b>	This issue / risk level impacts the Council as a whole. Mitigating actions should be taken at the Senior Leadership level.
<b>Function</b>	This issue / risk level has implications at the functional level and the potential to impact across a range of services. They could be mitigated through the redeployment of resources or a change of policy within a given function.
<b>Cluster</b>	This issue / risk level impacts a particular Service or Cluster. Mitigating actions should be implemented by the responsible Chief Officer.
<b>Programme and Project</b>	This issue / risk level impacts the programme or project that has been reviewed. Mitigating actions should be taken at the level of the programme or project concerned.

Net Risk Rating	Description	Assurance Assessment
<b>Minor</b>	A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.	<b>Substantial</b>
<b>Moderate</b>	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified, which may put at risk the achievement of objectives in the area audited.	<b>Reasonable</b>
<b>Major</b>	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.	<b>Limited</b>
<b>Severe</b>	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited.	<b>Minimal</b>

Individual Issue / Risk Rating	Definitions
<b>Minor</b>	Although the element of internal control is satisfactory there is scope for improvement. Addressing this issue is considered desirable and should result in enhanced control or better value for money. Action should be taken within a 12 month period.
<b>Moderate</b>	An element of control is missing or only partial in nature. The existence of the weakness identified has an impact on the audited area's adequacy and effectiveness. Action should be taken within a six month period.
<b>Major</b>	The absence of, or failure to comply with, an appropriate internal control, which could result in, for example, a material financial loss. Action should be taken within three months.
<b>Severe</b>	This is an issue / risk that could significantly affect the achievement of one or many of the Council's objectives or could impact the effectiveness or efficiency of the Council's activities or processes. Action is considered imperative to ensure that the Council is not exposed to severe risks and should be taken immediately.

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## 5 Appendix 2 – Assurance Scope and Terms of Reference

### 5.1 Area subject to review

The Adults with Incapacity (Scotland) Act provides ways to help protect adults, aged 16 or over, who are or may become, incapable of looking after their own welfare or finances. This may be because of a mental health problem, learning disability, dementia, or other difficulties in communication. After due consideration of the supported person's needs and circumstances, the Health and Social Care Partnership can make a request for an assessment of capacity and use a 'Decision-Specific Screening Tool' for guidance as to whether a formal assessment is needed. A GP would then make the Mental Capacity Assessment decision for a patient.

The act allows other people (including e.g. family members, main carers, or the local authority) to make decisions on behalf of those adults, subject to authorisation and other safeguards, and following 5 key principles.

- Principle 1 – Any action or decision taken must benefit the person and only be taken when that benefit cannot reasonably be achieved without it.
- Principle 2 – Least restrictive option, any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.
- Principle 3 – Take account of the wishes of the person, in deciding if an action or decision is to be made and what that should be, account must be taken of the present and past wishes and feelings of the person, as far as this may be ascertained.
- Principle 4 – Consultation with relevant others, take account of the views of others with an interest in the person's welfare.
- Principle 5 – Encourage the person to use existing skills and develop new skills.

The different interventions are:

- Power of attorney – This must be registered with the Office of the Public Guardian and is where individuals whilst they have capacity can grant someone to act as their continuing, financial and / or welfare attorney.
- Access to Funds scheme – Applied for through the Office of the Public Guardian, allows access to the adult's bank or building society account to meet living costs. An application can be made by an individual or an organisation.
- Guardianship – Granted by the Sheriff Court, can cover property and financial matters or personal welfare.
- Intervention order – Granted by the Sheriff Court, is suitable where there is a single action or decision to be taken on behalf of the adult.

DWP appointeeship may be applied for in cases where the only funds available are state benefits / state pension, without a requirement to apply for separate Access to Funds.

Part 4 of the act covers adults who live in authorised establishments (including care homes) who lack the capacity to manage their financial affairs. It provides a mechanism for managers of those establishments to manage finances on the adult's behalf. Part 4 is most likely to be used for residents with relatively small amounts of money who have no one else to lawfully manage their financial affairs. It covers resident's free assets and income and other moveable property to which they are entitled.

The Health & Social Care Partnership is involved with a number of Adults With Incapacity in the area. In a number of cases the Service is required to handle the service user's finances. The Health & Social Care Partnership is still to confirm the number of each type of arrangement, and overall estimated value of funds managed on service users' behalf.

The Partnership also has a duty to supervise welfare guardians, including review of arrangements, provision of advice and information, and investigating complaints.

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## Rationale for review

The objective of this audit is to ensure that there are evidence based controls in place regarding funds managed on behalf of clients.

The area has not been reviewed in detail by Internal Audit, however in 2022 as part of an audit of Learning Disabilities services, report number AC2210, some variation in practice was identified, and a need for additional support for staff involved in managing funds to ensure consistency.

There is substantial scope for fraud and error where funds and moveable property are being accessed and managed on others' behalf. There are risks to vulnerable service users' funds, and to staff involved in the management of their funds, if appropriate procedures, checks, and balances are not in place and operating effectively.

The Service is accountable to the Care Inspectorate for the proper application of various parts of the Act, however this forms only part of any review of individual establishments, primarily focusing on care delivery.

## 5.2 Scope and risk level of review

This review will offer the following judgements:

- An overall **net risk** rating at the Cluster level.
- Individual **net risk** ratings for findings.

### 5.2.1 Detailed scope areas

**As a risk-based review this scope is not limited by the specific areas of activity listed below. Where related and other issues / risks are identified in the undertaking of this review these will be reported, as considered appropriate by IA, within the resulting report.**

The specific areas to be covered by this review are:

- Adults with Incapacity policies and procedures
- Management, decision making, application of policy and procedure, and record keeping in respect of Adults with Incapacity and associated interventions.
- Records and management of service users' funds
- Records and management of service users' personal assets

## 5.3 Methodology

This review will be undertaken through interviews with key staff involved in the process(es) under review and analysis and review of supporting data, documentation, and paperwork. To support our work, we will review relevant legislation, codes of practice, policies, procedures, guidance.

Due to flexible working arrangements, the majority of this review will be undertaken remotely. Any site visits required will be planned and risk assessed. We remain flexible in the face of the rapidly changing risk environment. Where our resourcing or access to the client is impacted further by COVID-19, we will adapt our audit methodology to balance the risks and assurance output and will work in co-operation with key contacts to understand the impact of the situation as it evolves.

## 5.4 IA outputs

The IA outputs from this review will be:

- A risk-based report with the results of the review, to be shared with the following:
  - Key Contacts (see 1.7 below)
  - Audit Committee (final only)
  - External Audit (final only)

## 5.5 IA staff

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The IA staff assigned to this review are:

- Heulwen Beecroft, Auditor (**audit lead**)
- Colin Harvey, Audit Team Manager
- Jamie Dale, Chief Internal Auditor (**oversight only**)

## 5.6 Council key contacts

The key contacts for this review across the Council are:

- Sandra MacLeod, Chief Officer (ACHSCP)
- Fraser Bell, Chief Operating Officer (ACHSCP)
- Paul Mitchell, Chief Finance Officer (ACHSCP)
- Katharine Paton, Service Manager (ACHSCP)
- Claire Wilson, Chief Officer, Adult Social Work, (ACHSCP)
- Steven Stark, Service Manager, (RCH)
- Kevin Dawson, (NHS Grampian)
- Tracey McMillan, Service Manager, (ACHSCP)
- Nicola McLean, Service Manager (ARI)
- Barbara Dunbar, Service Manager, (ACHSCP)

## 5.7 Delivery plan and milestones

The key delivery plan and milestones are:

Milestone	Planned date
Scope issued	19-Jan-23
Scope agreed	28-Feb-23
Fieldwork commences	24-Mar-23
Fieldwork completed	2-May-23
Draft report issued	12-May-23
Process owner response	19-May-23
Director response	26-May-23
Final report issued	2-Jun-23