

SPSO decision report



Case: 202408164, Fife Health and Social Care Partnership
Sector: Health and Social Care
Subject: Adult support and protection / adults with incapacity
Decision: upheld, recommendations

Summary

C complained about an Adult Support and Protection (ASP) investigation carried out by the partnership into concerns raised by C about the welfare of their parent (A) who has Alzheimer's disease.

C reported concerns including poor nutrition, lack of personal care, unsafe living conditions, financial abuse, and social isolation. The partnership maintained that it had conducted a full ASP investigation which found no evidence of harm or risk to A. They stated that A had a comprehensive care package in place, including care visits, meals provision, and day services, and that regular reviews and welfare checks were ongoing. They also highlighted legal limitations around discussing the case without appropriate consent and directed C to other bodies (e.g. the Office of the Public Guardian) regarding power of attorney (POA) issues.

We took independent advice from a social worker. We found that the ASP investigation had been thorough and we noted several examples of good practice, including multi-agency consultation, direct exploration of the allegations, and ongoing monitoring arrangements. However, we found that it was unreasonable that social work staff did not fully analyse the POA document at the outset. A detailed review of the POA powers would have clarified C's sibling's legal authority and better informed both the investigation and communication with C. The partnership also failed to explicitly apply or reference the principles of the Adults with Incapacity (AWI) Act, which should guide decision making.

Additionally, we found that A's wishes regarding contact with C and the use of advocacy services, although referenced, were not adequately explored. Incorrect advice was given to C about requiring a mandate, which caused confusion, particularly given A's lack of capacity.

While the overall investigation was considered reasonable, these failings represented missed opportunities to provide clearer guidance, manage expectations, and ensure full consideration of legal frameworks. Although no evidence of harm to A was found, the partnership's handling of key aspects - particularly the POA, communication, and application of legislation - was not reasonable.

On balance, we upheld C's complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for the failings identified. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/meaningful-apologies.

What we said should change to put things right in future:

- There should be a prompt question as standard within an ASP referral and investigation paperwork to

determine if a POA or a Welfare Guardianship order is in place. Relevant staff should have awareness and knowledge of the principles of AWI legislation, in particular, in relation to the issues of POAs and how the partnership develops practice with its staff. For example, understanding how a POA is created, when they are activated, ensuring they are read and the powers understood, requesting updated copies for case records, how the welfare powers link to the concept of incapacity and how to mediate and challenge their use if they are not being used appropriately. In this case, had staff had relevant knowledge on both, they could have provided appropriate advice to the complainant sooner.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.