

Operational Procedure 48

Moving Adults On

Responsible Officer	Senior Housing Officer – Supported Accommodation					
Issue No.	1	Revision No.		Revision Date:		Doc Ref: OP48 v1

Amendment and Authorisation Record

OP48 Moving Adults On

Date	Author	Paragraph ref:	Nature of change	Authorised by

MOVING ADULTS ON THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

INTRODUCTION

Once the decision has been taken, either at a case conference or through discussions, that an adult needs to be moved on to a more appropriate care setting - there are a number of challenges facing Council staff when the adult's capacity may be in question. Examples of when this situation may occur:-

- a move from home into supported accommodation.
- a move from home into residential care.
- a move from supported accommodation into residential care.
- a move within supported accommodation units.
- a move within residential care properties.

DOES THE ADULT HAVE CAPACITY TO CONSENT TO THE MOVE?

Whether or not the adult has the capacity to consent to the move is the first question that must be answered. An informal assessment of the adult's ability must be arranged by the Social Worker or another appropriate Council officer in line with the agreed procedures for carrying out such an assessment. The assessment should involve staff who know the adult and have worked closely with him/her. The assessment may involve pictures, communication aids or any other appropriate method of assessing the adult's capacity to consent to the move.

However, if the adult has had no experiences of living away from their current home then it may be difficult to explain what a move would involve. A social worker or another appropriate Council officer should be involved in planning an introduction to the proposed move, which will enable the adult to experience their proposed new home in a meaningful and positive way that is suited to the adult's needs and abilities. The language used to convey this to the adult will have to be carefully chosen to avoid unnecessary distress.

THE ADULT HAS CAPACITY TO CONSENT TO THE MOVE

If the outcome of the assessment is that the adult has the capacity to consent to the move, the assessment process and final outcome must be clearly documented. Those involved in the assessment should all be in agreement as to the outcome and sign the assessment report. The adult's decision is therefore clearly documented.

If appropriate, relatives and carers should also be involved in these discussions to ensure that they are aware of what is happening and the outcome of the assessment. This will give them the opportunity to voice any concerns about the assessment and the outcome. However, staff must remember that if the adult has the capacity to make the decision, the adult's family has no right to interfere with that decision unless they hold powers under the AWI Act which covers the issues to be decided upon.

The adult can then be moved in accordance with his/her decision taken.

THE ADULT LACKS CAPACITY TO CONSENT TO THE MOVE

If the outcome of the assessment is that the adult lacks the capacity to consent to the move, the assessment and final outcome should be clearly documented. Those involved in the assessment should all be in agreement as to the outcome and sign the assessment report.

Is the adult compliant?

The next stage is to ascertain whether or not an adult will comply with the move even though they lack the capacity to make a formal decision. A carefully developed transition plan should be developed to introduce the adult to their new home in a meaningful and positive way suited to the adult's needs and abilities. This should help to identify whether or not the adult will be compliant with the move. However, it may be that it is difficult to gauge whether or not the adult will be compliant until the transition process is fully underway. The issue of compliance should be discussed regularly, particularly at reviews to ensure that any signs of non-compliance are highlighted at an early stage.

Is the adult non compliant?

Even though the adult lacks the capacity to consent to the move, they may not be compliant with the move. For example:-

- the adult may refuse to leave their current home despite the transition work carried out. The adult may even have refused to engage in any of the transition work.
- the adult may display signs of unhappiness and an unwillingness to co-operate with the move despite the transition work carried out.

The adult is not compliant

In these circumstances, it is not recommended that the adult is moved until formal powers are obtained under the AWI Act.

A case conference should be held involving appropriate individuals from the following list:-

- family
- social work management
- social worker/key worker
- carers (current & proposed)
- legal
- health
- housing

The cases conference should discuss the proposed move and the adult's non-compliance. There should be a discussion around the need to seek formal powers to move the adult. The best course of action in this instance is that the family agree to

seek their own legal advice to progress the necessary court action. If the family are not willing (or able) to progress this then the Council will have to do so. It must be ensured that the Social Work Service is willing to meet the necessary expenses involved in making an appropriate application to Lerwick Sheriff Court.

If the Council is to progress the necessary court action, there should be a full discussion as to what powers are required.

Welfare - what welfare powers are necessary?

- where is the adult to be moved to?
- what care do they require?
- is there a course of medical treatment required?
- any other specific welfare issues?

Property/Finances - what property & financial powers are necessary?

- is there a tenancy to be terminated or commenced?
- are there bills to be paid and services to be disconnected?
- who requires to be notified of the change of address & circumstances?
- any other specific property/financial issues?

If the adult owns heritable property, then there must be a financial guardianship in place to deal with that property. The Council cannot hold such powers and therefore a member of the family or appropriate professional would have to hold such authority. There must also be a full discussion about how the adult's finances are and will be managed in the future following the move.

A minute of the case conference will be prepared clearly detailing the proposed course of action and how this fits in with the AWI principles. Legal will be able to assist in the drafting of this minute.

Legal and the appropriate MHO will then work together to obtain the necessary reports and progress the application to Lerwick Sheriff Court for powers under the AWI Act to move the adult.

The adult can only be moved once the Sheriff has granted the appropriate powers.

The adult is compliant

If the adult is compliant, but does not have the capacity to consent to the proposed move, a case conference should be held involving appropriate individuals from the following list:-

- family
- social work management
- social worker/key worker
- carers (current & proposed)
- legal
- health
- housing

The case conference should outline the proposed move and the fact that the adult is compliant with the proposal. A full discussion should take place as to how the proposed move complies with the AWI principles. All those involved must express their view as to whether they agree that this move is in the adult's best interests.

The case conference must also discuss whether the proposed move would amount to a deprivation of liberty under Article 5 of the European Convention of Human Rights. What amounts to a deprivation of liberty will depend on the circumstances of each individual case. Reference should be made to the Scottish Executive Guidance CCD5/2007 – "Provision of Community Care Services to Adults with Incapacity".

It should be made clear to all those attending the case conference that where there are no concerns raised and that the move would not amount to a deprivation of liberty, the Council would not be seeking formal powers under the AWI Act to move the adult. It must be stressed that the family has the right to seek legal advice and obtain the necessary powers under the AWI Act.

No concerns are raised, the family are not seeking formal powers

Where there are no concerns raised and the family have indicated that they are not going to seek formal powers under the AWI Act, a detailed note of the case conference and the decisions taken should be prepared. Legal will be able to assist in the drafting of this minute.

The minute and any appropriate advice from Legal should be sent to Social Work Managers so that they can give their consent to the move going ahead without formal AWI powers in place on the basis that the adult is compliant, no concerns have been raised and that the move complies with the AWI Principles.

A letter should then be sent to the family, outlining the proposed move, that no powers are being sought, that the move is in line with the general principles and stressing that they have the right to seek their own independent legal advice. Essentially this letter gives the family one final chance to oppose the move before it happens.

The adult can then be moved under section 13ZA of the Social Work (Scotland) Act 1968 which provides that where a local authority has concluded that an adult requires a community care service, but is not capable of making decisions about the service, they may take any steps which they consider necessary to help the adult benefit from that service..

Family raises concerns

Where the family raise concerns about the proposed move, a detailed note of the case conference and the outcome should be prepared. Legal will be able to assist in the drafting of this minute. If the family raise concerns or oppose the move, every effort must be made to reassure the family or to consider alternatives.

If Council officers and the family cannot agree on the proposed move, the Council will have to decide whether the adult is moved anyway under section 13ZA of the Social Work (Scotland) Act 1968 and potentially face a legal challenge from the family or apply for the formal powers required under the AWI Act. The decision should involve Social

Work Managers and Legal, based on a full discussion of the facts. A full minute of this discussion should be prepared and the family notified of the outcome.

The adult can then be moved or wait until formal powers are obtained.

Deprivation of Liberty

If the outcome of the case conference is that there are concerns that the proposed move will amount to a deprivation of liberty under Article 5 of the ECHR, there should be a discussion around the need to seek formal powers to move the adult. The best course of action in this instance is that the family agree to seek their own legal advice to progress the necessary court action. If the family are not willing (or able) to progress this then the Council will have to do so. It must be ensured that the Social Work Service is willing to meet the necessary expenses involved in making an appropriate application to Lerwick Sheriff Court.

If the Council is to progress the necessary court action, there should be a full discussion as to what powers are required.

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If the adult owns heritable property, then there must be a financial guardianship in place to deal with that property. The Council cannot hold such powers and therefore a member of the family or appropriate professional would have to hold such authority. There must also be a full discussion about how the adult's finances are and will be managed in the future following the move.

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