

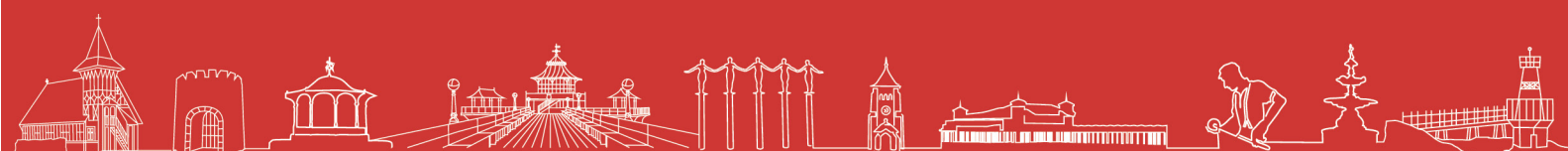
North Somerset Council

Adult Social Care

Protection of property and pets (S.47 Care Act) policy

1 Document information

Title	Protection of property and pets (S.47 Care Act) policy
Status	Final
Current version	Final
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Consultation	Principal Social Worker, Principal Occupational Therapist Head of Mental Health and Learning Disabilities Services, Head of Service Development, AMHP Lead Legal Department.
Approval	Adult Social Care Directorate Leadership Team
Approval date	March 2023
Planned review	October 2025



Version history	Date	Description
Version 1	10 October 2022	Draft
Version 2	25 October 2022	Charging guidance added
Version 3	27 October 2022	AR comments added
Version FINAL	March 2023	Ratified

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3. Purpose and Aim

This policy explains the North Somerset Council's (NSC) position regarding the time period up to receiving a Court Order for safeguarding properties of adults with care and support needs being cared for away from home as identified in the Care Act 2014. The council has a duty during such time to take reasonable steps to prevent or mitigate loss or damage to property (including pets) and as such has this policy in place if a person has no other suitable arrangements to protect their property.

This policy will be followed by all professionals responsible for carrying out the protection of property as a delegated duty on the council's behalf and ensures the council complies with legislation (S.47 of Care Act 2014). In most circumstances the expectation and starting point will be that a person will have the responsibility to protect their own property, even if this is with support. Exceptions to this may be where the person is deemed to lack capacity within the meaning of the Mental Capacity Act or meets the criteria under the Mental Health Act.

When applying this policy, social care workers and court of protection officers will operate within the decision-making arrangements of the Mental Capacity Act 2005, where a person has been assessed as lacking capacity to take that decision themselves.

4. Legal Context

4.1 Duty to Protect Property

Section 47 of the Care Act 2014 places a duty on local authorities to take reasonable steps to prevent or mitigate the loss or damage to an adult's moveable property where:

- The adult is being cared for in hospital or is having their needs for care and support met in accommodation such as a care home and
- it appears to a local authority that there is a danger of loss or damage to moveable property (including pets) of the adult's in the authority's area because:
 - (i) The adult is unable (whether permanently or temporarily) to protect or deal with the property and
 - (ii) no suitable arrangements have been or are being made.

Where it is identified that the local authority has a duty to protect a person's property, section 47 of the Care Act 2014 gives statutory powers to local authorities (and those it delegates this function to), who may:

- At all reasonable times and on reasonable notice enter any premises which the adult was living in immediately before being provided with accommodation or admitted to hospital, and
- Deal with any of the adult's movable property in any way which is reasonably necessary for preventing or mitigating loss or damage.

The duty to protect property lasts until whichever of the following happens first:

- the adult in question returns home, or
- makes their own arrangements for the protection of property, or
- there is no other danger of loss or damage to property, or
- the adult dies.

4.2 Formal Identification and Authorisation

Professionals dealing with the protection of a person's property have the power at all reasonable times to enter the premises to protect that property but must, if requested, be able to produce formal and valid identification showing their authority to exercise this power. NSC managers will give relevant social care workers written permission to gain access to a property which can be produced as evidence if required.

If access to the property is required, the social care worker will obtain consent from the person, or if they lack capacity to consent, anyone acting with legal authority. If neither option is available, then a decision will be made in their best interest using the Mental Capacity Act 2005. Different arrangements will be in place when someone is detained under the Mental Health Act. In these circumstances an Approved Mental Health Professional (AMHP) will make the immediate arrangements which are necessary to mitigate loss or damage.

4.3 Obstruction of a Protection of Property

If an obstruction occurs and this does not appear to be in the interests of the person whose property requires protecting, the Multi-Agency Safeguarding Procedures will be followed and the relevant NSC Commissioner informed. Legal advice will also be sought in order to ensure that the council upholds its duty to protect the person's property.

Under s.115 of the Mental Health Act, AMHPs can, if appropriate enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if the AMHP has reasonable cause to believe that the patient is not under proper care. If entry is refused the AMHP can inform the person refusing entry that this could constitute an obstruction under s.129 of the Mental Health Act.

4.4 Recovering Reasonable Expenses

The council can recover any reasonable expenses it incurs when protecting property from the adult whose property they are protecting. The following list is not exhaustive but provides examples of costs that may be recovered:

- Gaining access to the property (if forced entry required)
- Securing the property — e.g., changing locks if required
- Storing any valuable items
- Arrangements to care for pets

5. Protecting a Property

Adult Social Services will make every attempt to locate the owner of the property but have powers under Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 to ensure that where it appears any building is unoccupied or that the occupier of the building is temporarily absent from it and is:

- (i) not secured against unauthorised entry
- (ii) is likely to become a danger to public health

Housing may undertake work in connection with the building for the purpose of preventing unauthorised entry or preventing it becoming a danger to public health. There is no requirement to give any notice where Housing considers it necessary to undertake immediate work. They can also recover any subsequent costs.

5.1 Deciding when a Protection of Property is required

Whenever an individual is admitted to hospital or to accommodation such as a care home, the social care worker involved will enquire whether or not the person has made arrangements, or is able to make arrangements, for the protection of their property.

NSC will, wherever possible, support adults to make their own arrangements to protect their property. If individuals have family members or friends who are involved, they will be asked if they are willing to look after the person's property, including pets, whilst they are away from their home.

If the person has capacity to make their own decisions it is their own responsibility to arrange and provide necessary insurance cover for the property. If they have capacity but are unwilling or refuse to protect their own property, the social care worker will explain the associated risks. Under those circumstances the council does not accept any responsibility for the property.

If the adult lacks the capacity to give consent for the protection of their property, then the social care worker will establish if there is an identified person who is authorised under the Mental Capacity Act (such as a lasting power of attorney or deputy) who can carry out the protection of property on the person's behalf.

If the adult in question lacks capacity and no other person has been authorised to act on their behalf, then a best interest decision will be made under section 4 of the Mental Capacity Act by the social care worker as to whether a protection of property should proceed.

5.2. Referring to the Court of Protection Team

If no arrangements are in place to protect the person's property, the relevant social care worker will refer the case to the Court of Protection Team.

5.3 Securing a property in urgent circumstances

There will be situations where urgent action will be required to protect the person's property, especially their valuables or pets. Reasonable notice will be given to the person or their attorney/deputy, and the length of the notice is likely to depend on the level of risk presented to the person's property and moveable objects.

As soon as the council takes 'responsibility' to protect the property, they will visit the property and take the following reasonable steps:

- Check all appliances are unplugged and left in a safe condition
- Check whether utilities need to be switched off
- Check there are no obvious water leaks or flooding
- Ensure the safety and welfare of any pets
- Secure all windows and doors
- Ensure there are no items of value/cash visible from outside windows
- Ensure post/papers/milk deliveries are picked up
- Check there are no signs of damage to the property or fences
- If the property is rented, the landlord will be informed as soon as possible

If relatives exist and are actively involved in the individual's life, the social care worker managing the case will notify them that the above steps have been taken to safeguard the property as soon as possible. Thereafter, if the relatives visit the property and decide to change the locks, the family are asked to inform NSC of this action.

5.4 Inspection and Inventory

Where it has been identified there is a further need to protect the contents of the adult's property, an inspection will be made of the premises. Further protective actions may include:

- Disposal of perishable foods.
- Searching for documents, cash, jewellery, and other valuables.
- Safeguarding valuables by secure storage
- Arranging, where necessary, the removal of property to secure storage (the person is liable for relevant expenses).
- Ensuring the ongoing security of the premises.
- Ensuring that the person's financial affairs are dealt with in accordance with the law and referrals are made to the appropriate agencies.
- Arranging where necessary, the decontamination of the premises and/or making the property safe and habitable.
- Cancellation of milk/papers etc.

If the property search reveals aspects of a life that was otherwise unknown, the employee will protect the person's privacy. The information will not be shared with anyone, unless it has implications for the safety of the person or other people, or if it is believed that a serious crime has been/is being committed (e.g. evidence of drug dealing).

6. Uninhabitable or Unsafe Conditions

There may be occasions when it is identified that the person is or has been living in unsanitary, infested/verminous, or otherwise unsafe conditions. In these circumstances, the social care worker will gain consent from the person as to how to make the property safe and habitable. Depending on the nature of the problem, the social care worker will alert relevant individuals or organisations who may have a legal duty to make the property safe and habitable or to carry out enforcement action if required.

If it appears that the person's decision-making is impaired in relation to making their property safe and habitable, the provisions of the Mental Capacity Act will be followed and if the person lacks capacity, a best interest decision will be required as to whether the property should be cleaned, repaired or de-infested.

7. Pets

If no other option is available for the welfare of pets, a placement should be made in a cattery or kennels at the owner's expense. The Care Act makes it clear that where possible, the owner should fund the cost of the care of their pet.

If the owner is unable to pay the full cost, the local authority may be able to fund or part fund this for a limited period where there is a clear intention for the owner to return home. This should normally be for no more than six weeks and should be agreed by the team manager. If, during this period the animal needs the care of a vet it should be taken to the vet of the owner's choice if the owner is able to pay the vet's fee or to the PDSA if the owner is only able to make a small contribution. In all cases, the owner is responsible for paying the fee or contribution.

If funding is required beyond the initial six weeks, the team manager can agree it for up to a further six weeks but beyond this, it becomes 'an undue burden on the local authority' (Law Commission 2011), as well as giving rise to concern about the animal's welfare and only in truly exceptional cases, should funding continue. The person must be made aware that funding will cease and unless they are able to identify an alternative, rehoming should be sought for the animal.

8. Long-term arrangements

The person's situation and the requirement for the continuing protection of their property will be reviewed on a monthly basis. If it becomes apparent, following a social care assessment or review that the person is likely to require long-term residential or nursing care, or extra care, or will not be able to return home for some time, then the social care worker/court of protection team will take appropriate action.

9. Charging for protecting a property

The council can recover reasonable costs incurred in protecting property under the Care Act duty. North Somerset Council will recharge clients for the cost of actions taken on their behalf.

The council will ensure that the person is made aware of the charging policy prior to any action being taken. Where the person has capacity, they will be required to sign a form of authorisation agreeing to our assistance and to repaying costs.

If it appears the client may not have capacity to manage their own finances, a Mental Capacity Assessment will be completed to determine this. If the person has no one to act for them, a referral will be made for the Council to become the client's Appointee or Deputy.

10. Governance and management of the protection of property

Each request for protection of property will be signed off by the relevant team manager.

The practitioner then workflows (via LAS) the protection requirements to the Brokerage team who will arrange the provider/s to protect the property.

Where the adult lacks capacity and has no one to act for them, the practitioner must also refer to the Court of Protection Team who will arrange for the recovery of the cost of protecting the property.

Each month Brokerage will run a report showing all active property protections and request that the practitioner confirm a further period is required.

The practitioner will review each property protection (including arrangements for pets) monthly.

After two months a new protection of property process must be begun.