

Practice Guide

Supervising and supporting welfare guardians

Improving Practice in Scotland

Practice Guide

Supervising and supporting welfare guardians

Acknowledgements

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Introduction

The Social Work Inspection Agency (SWIA) and the Mental Welfare Commission for Scotland (MWC) (Appendix 1) have collaborated in the production of this joint practice guide after identifying the need for improvements in arrangements for the supervision and support for welfare guardians.

It has become evident that some private guardians are not getting the information and support they need to fulfil their role. For the purposes of this guide, private guardian is used to denote any non-local authority guardian. Many local authority supervising officers¹ and responsible officers² receive no preparation to undertake their role and many are unaware of their duty to visit both the guardian and the adult on guardianship. Hence, this guide is aimed at local authority front line staff, line managers and Chief Social Work Officers (CSWO). This guidance is supplementary to the code of practice for local authorities and does not replace it.

01

1 Local authority officer responsible for supervising private welfare guardians.

2 The local authority officer with delegated responsibility for carrying out the functions and duties of guardian, where the Chief Social Work Officer was appointed as guardian.

1

Supervising and supporting welfare guardians

In the Adults with Incapacity (Scotland) Act 2000 (the Act), welfare guardianship provides the means to protect adults who lack capacity to make particular decisions or take particular actions for themselves. An adult in this Act is a person who is 16 or over. The Act provides the opportunity for people to become welfare and/or financial guardians for adults with impaired capacity and sets out how decisions can be made for them. Underpinning the Act is a set of general principles. Guardians, and anyone using any part of this Act, must be guided by these principles.

The principles require that in taking any actions under the Act:

- the adult's present and past wishes and feelings must be taken into account;
- the views of the nearest relative and primary carer of the adult should be taken into account where reasonable and practicable;
- any interventions are of benefit to the adult;
- interventions are the least restrictive option in terms of the freedom of the adult; and
- the adult is encouraged to exercise what skills they have to the extent possible and are helped to develop new skills.

The Act created a number of checks and balances to protect people who lack some or all capacity. The MWC and the Office of the Public Guardian (OPG), for financial matters, have a specific safeguarding and monitoring role in this Act.

The Act also gives responsibility to local authorities to support and supervise private guardians. The intention was that supervisors would ensure that private guardians understand their new role, follow the principles of the Act, and get the support they need to make decisions.

2

Context

What the law says:

2.1 About the supervisory functions of local authorities

Section (10)(1) of the Act states that a local authority must:

“supervise a guardian appointed with functions relating to the personal welfare of an adult in the exercise of those functions”.

Although there is no automatic duty to supervise welfare powers of attorney, anyone claiming an interest in the personal welfare of the adult may make an application to the sheriff under Section 20(2) (c) requesting the sheriff rule that the welfare attorney be subject to the supervision of the local authority. The sheriff specifies the nature and extent of this supervision.

Scottish Ministers have made regulations with regard to how local authorities will carry out their duties. These regulations were amended in 2005 to reduce the requirement to visit so often.

2.2 About supervision visits

The regulations require that local authorities must arrange for the adult on welfare guardianship and the guardian to be visited on behalf of the local authority from time to time, as necessary, but definitely within three months of the order being granted and subsequently at intervals not exceeding six months. When the guardian is the CSWO, there is no requirement to visit the guardian, though the requirement to visit the adult remains the same as when there is a private guardian.

While the assumption in the code of practice for local authorities is that the local authority will always carry out the visiting functions themselves, it would be open to the local authority to delegate the visiting function, although the supervisory responsibility under the regulations would remain. The local authority would need to be clear about what was expected of those carrying out these visits on their behalf, including agreements on recording and communication with a named local authority contact who retains the supervisory responsibility on behalf of the local authority.

Where the guardian has been appointed for a period of less than one year the visiting requirement is more defined. The local authority must arrange to visit the adult and guardian within 14 days before or after the midpoint of the period for which the order has been granted, and within 14 days before the end of that period. One benefit is that the supervisor can, in these circumstances, review whether guardianship has served its purpose or is still required.

If the local authority considers it appropriate, any visit to the adult that is carried out under these arrangements can take place at the same time as a visit to the guardian or intervener. An intervener is someone authorised to take action under an intervention order (Section 53).

The regulations also allow that where the circumstances of an adult are such that it is not possible for a local authority to visit the adult within the time periods specified, then the visits should be as close as possible to the time when they should have taken place as the adult's circumstances will allow.

2.3 About intervention orders

The regulations stipulate supervision arrangements for intervention orders in circumstances where the sheriff has specified this. The adult who is the subject of the intervention order, and, where appropriate, the person authorised under the intervention order, must be visited “as often as required” for supervision. Where no frequency requirement has been specified, visits should take place at intervals of not more than one month for the period of time fixed by the sheriff.

Intervention orders only persist until the action authorised has been completed. If this is soon after the granting of the order, supervision may not serve any purpose and the sheriff may not make a supervision requirement.

3

Role of the Chief Social Work Officer (CSWO)

Section 5(i) of the Social Work (Scotland) Act 1968, as amended by Section 45 of the Local Government, etc (Scotland) Act 1994, requires every local authority to appoint a professionally qualified Chief Social Work Officer (CSWO). In March 2009 the Scottish Government published national guidance on *The Role of the CSWO: Principles, Requirements and Guidance*.

The CSWO is required to ensure the provision of appropriate professional advice in the discharge of local authorities' statutory duties. Overall the role is to provide professional governance, leadership and accountability for the delivery of social work services, whether these are provided by the local authority or purchased from the voluntary or private sector.

In addition, there are a small number of specific duties and final decisions in relation to a range of social work matters, including guardianship, which must be made either by the CSWO or by a professionally qualified social worker to whom the CSWO has delegated the responsibility and for which the CSWO remains accountable.

3.1 Promoting high professional standards

Many of the responsibilities of the CSWO identified in the national guidance are about ensuring high professional standards in meeting statutory requirements to provide advice, guidance and support to welfare guardians including:

- ensuring that there are effective governance arrangements for managing the complex balance of need, risk and liberties, in accordance with professional standards;
- actively promoting continuous improvement, raising standards and evidence-based practice, including developing person-centred services that are focused on the needs of the person using services;
- ensuring that appropriate systems are in place both to promote good practice, and to identify and address weak and poor practice;
- ensuring significant case reviews are undertaken into critical incidents; and
- preparing an annual report to the local authority on all statutory, governance and leadership functions of the role.

In order to promote high professional standards, local authorities should ensure that relevant staff have access to training on the Act. Effective quality assurance, including regular audits and reviews of local policies, procedures and guidance for staff relating to the Act, should also be in place.

The code of practice for local authorities states that it should be the responsibility of the CSWO to ensure that this code of practice is implemented by all staff to whom it is relevant. Details of local authorities' duties can be found in Chapter 8 of the code of practice for local authorities. Given the wide range of local authority staff who might be the first point of contact for a welfare guardian, the CSWO needs to make sure that social work services staff have a general awareness of:

- the existence of the Act, its regulations, the powers and interventions available, and the duties conferred;

- the principles of the Act as set out in Section 1;
- the existence of the code of practice for local authorities exercising functions under the Act;
- the co-existence of the Act with other legislation, such as the inter-relationship with Part 1 of the Adult Support and Protection (Scotland) Act 2007, the Mental Health (Care and Treatment) (Scotland) Act 2003; and
- the relationship to wider legislation such as the Equality Act 2010.

3.2 Dealing with disputes

Conflicts of interest may arise for a number of reasons, including the role of the local authority in both safeguarding welfare as well as in commissioning and providing services. In the first instance, the key to dealing with potential conflict is to apply the principles, and where appropriate to seek professional or legal advice. Managers should be familiar with the council's escalation policies and procedures and ensure the CSWO is informed at the earliest stage.

Local authorities should put in place procedures for managing disputes between different proxies, and between proxies and the local authority in exercising its functions.

3.3 CSWO Annual Report

Data on statutory work relating to adults with incapacity, including guardianship, has routinely featured in CSWO annual reports. In order to produce information for these high-level reports, it is essential that there are systems in place that enable the reporting of accurate and timely, aggregate information. This should include, as a minimum, data on the number, type and duration of orders for both local authority and private guardianships. Reports should also include information on assessments undertaken by MHOs for welfare guardianship applications. Information on orders for financial guardianship should also be collected and reported, as local authorities have responsibilities for applications relating to financial powers.

The CSWO report may also include more detailed information including:

- an analysis of the implications of the level of activity for both MHO services in the application process and community care teams in meeting local authority supervisory responsibilities;
- identifying how the welfare guardianship orders held by the CSWO and private orders are managed and supervised;
- information on the numbers of private and local authority orders;
- information on orders by care group, ethnicity, gender and age;
- feedback from private guardians on the quality and frequency of support;
- identification of issues for the local authority in discharging its duties;
- the numbers of guardianship orders recalled; and
- matters arising from quality assurance processes, including case file audits.

4

Role of the social work manager/team leader

4.1 Providing general information and advice

The Act requires local authorities to provide advice, guidance and support to welfare guardians. Normal contact should be with the local authority supervisor, but that staff member cannot be available 24 hours a day. Welfare guardians should know how to contact social work services, including out of hours, in the event of any crisis.

Team leaders should ensure staff are aware of the names and contact details of social work staff who have specialist expertise in the Act. Staff should also know where to access copies of the codes of practice, policies and procedures.

Up-to-date information and training about the Act should be provided to staff and should be included as part of induction for new staff. Regular discussions in team meetings about the use of the Act should take place in order to share and develop practice. Staff involved in assessment and care management require particular training on how the Act fits into their assessment and care management role.

Team leaders and line managers should encourage staff to raise awareness of powers of attorney (POA), whilst people still have the capacity to grant someone they trust powers to act as their continuing (financial) and/or welfare attorney. A welfare power of attorney only comes into effect in the event of the granter's loss of capacity.

4.2 Workload management

The significant increase in the number of welfare guardians, often for indefinite periods, has placed a strain on local authorities to carry out their supervisory responsibilities. In exercising supervisory responsibilities, line managers should be satisfied that their staff provide a proportionate response based on assessments of the adult's circumstances.

Staff can take on both the supervisor and care management role, although it is important for staff to be aware of their separate statutory responsibilities in supervising the guardian. In complex situations, consideration should be given to allocating two people to provide these different roles. This is discussed further at 5.4.

4.3 Preparation and support to assist supervisors to undertake the role

12 One of the most important tasks for managers is to ensure staff have access to training and development opportunities. As the number of private welfare guardians increases and more social workers and other staff take on the role of supervisor, training for supervisors becomes more crucial if this duty is to be carried out effectively.

Managers should include training for supervisors in their training needs analysis and training plans. Training and guidance should reflect the skills and knowledge required when operating as a supervisor, including the interface between mental health and adult support and protection legislation. It cannot be assumed that all mental health officers (MHO) will have received the necessary preparation for this role as part of their MHO training course.

All supervisors should have access to, and be familiar with, the code of practice for local authorities and the revised code of practice for guardians and interveners.

4.4 Staff supervision

The code of practice suggests that local authorities should ensure that the person acting as guardian for the CSWO should be supervised formally by their line manager. Responsible officers acting as guardian on behalf of the CSWO and supervisors of private guardians should be supervised for this purpose by a manager experienced in the operation of this role, though this need not always be an MHO.

All adults subject to welfare guardianship should be discussed from time to time at staff supervision sessions. Where there are complex situations, these should be kept under active discussion at supervision. These discussions should be formally recorded, noting any issues or concerns and added to case file notes, as appropriate. Managers should consider with staff whether guardianship continues to be necessary, as in some situations the adult's capacity may have improved or the powers may no longer be necessary. They should also discuss whether the principles of the Act are applied appropriately.

Local authorities can recall an order when the CSWO is the welfare guardian. Local authorities can also initiate the recall of private welfare guardians, if the grounds for the appointment of a guardian are no longer fulfilled, or the welfare of the adult can be satisfactorily safeguarded or promoted, for example, through the use of the Social Work (Scotland) Act 1968. This should first be discussed with the guardian as well as in supervision.

The new guidance on the recovery of expenditure on accommodation and services encourages local authorities to enter into joint written agreements whenever an out-of-area placement is arranged. Written agreements on supervision arrangements would also be helpful whenever an adult on guardianship, whether private or CSWO, moves from one local authority area to another.

If there is any dispute between local authorities as to who has statutory responsibility under the Act, either as guardian or supervisor, it may be helpful to refer to the initial stages of the dispute resolution procedure and principles referred to above, at Section 15.2.

4.5 Importance of recording

Recording is a vital part of the social work task. Welfare guardians, both private and local authority, are required to keep records to show when they have exercised their welfare guardianship powers. We know from the MWC monitoring of welfare guardianship, that even where good practice exists, the quality of recording of supervision sessions is inconsistent.

Templates can facilitate better recording. These should link to electronic recording systems. Local authorities who have not got one in place should develop a recording template for use by their staff. An example of a supervision review template is included at Appendix 2, which may be customised for this purpose.

Line managers should routinely audit the recording of the supervisory tasks to check that recording is completed on a regular basis and it is of a good standard.

5

Role of the supervisor

5.1 Purpose of supervision

Supervision should be beneficial to the guardian and the adult, and avoid being unnecessarily burdensome. The supervisor should provide advice, guidance and support to the guardian.

The supervisor should be familiar with all the particulars of the order. Through supervision, they should identify that the order continues to be appropriate, safeguards the needs of the adult and promotes their welfare.

From the outset an applicant, or proposed guardian, should be informed that if a welfare guardianship order is granted the local authority has an ongoing duty to supervise the guardian (or guardians where more than one has been appointed) and that this includes regular visiting of both the adult on guardianship and the guardian. Supervisors may also have to investigate any complaints about the way in which the guardianship is being operated, if necessary.

The code of practice for local authorities sets out guidance on how to exercise the functions of a welfare guardian. Firstly, it suggests there should be frequent meetings between the guardian and the person lacking capacity and regular discussions with relevant others, including the care manager/supervisor. The frequency of such meetings will depend on the extent of the guardian's ordinary day-to-day contact with the people involved. In some circumstances the guardian will be living with the person who lacks capacity and meeting support workers on a daily basis. The care manager/supervisor might be in weekly contact. Setting aside time to meet more formally as supervisor might serve little purpose, or it

might prove to be a useful exercise, to make sure everything is going to plan. Most importantly, the supervisor should determine the level and frequency of contact beyond the statutory minimum based on individual need.

In other circumstances the private guardian might live abroad and only be seeing the person who lacks capacity once or twice a year. Depending on how well settled the situation is, this might be perfectly acceptable as long as the supervisor is able to maintain contact with the guardian, call on them when necessary to make decisions, and periodically have formal discussions with them about the guardianship. If there is a need for a more active involvement from the guardian, and they are not able to carry out their function as fully as necessary, the supervisor must consider whether someone else should replace their role, such as another relative, or the local authority.

The supervisor should be assessing the impact of changes in the life of the guardian and the individual, and be responsive to these. It will be necessary to liaise closely with the care manager if this role is carried out by another person in the local authority.

The supervisor should check that the guardian is maintaining satisfactory contact with the adult through visits, phone calls or other means appropriate to the adult's circumstances. Supervisors should also ask to see the written records that the Act requires guardians to keep, although the level of detail of recording will vary depending on the adult's circumstances.

Supervisors need to be able to reassure themselves that the guardian is using their authority in line with the principles and in the best interests of the person on guardianship. If not, they may need to give guidance to the guardian on how to do this, and ultimately consider whether the guardian needs to be replaced or removed.

Practice example where the adult's father is a private guardian:

A senior practitioner reported: "The father kept saying 'what's the point, we've always been his carers'. My approach has had to be gradual. Helping the adult's parents with their formal roles and responsibilities; giving information and guidance, and looking at the wider aspects. In situations where everything is going well, this is fine. If there are concerns regarding a person's care or where errors are made, it is usually more down to a lack of knowledge. If not ... I would have to take a far more pro active role".

In most private applications a substitute guardian will be identified who may take on the role of guardian or attorney if the original person cannot continue to carry out their role. The OPG has highlighted that some guardianships and powers of attorney fail due to the lack of a substitute, even when a perfectly suitable one may exist. Although nearly all private applications now have a substitute identified, it is worth the care manager/supervisor discussing this with the applicant/guardian where this is not so, just to check that they have thought about this.

It is not a requirement of the Act that an MHO prepares a suitability report on a substitute guardian. However, if the MHO does have legitimate concerns as to the suitability of the substitute guardian, these should be brought to the attention of the sheriff along with the suitability report on the primary guardian.

5.2 Planning the supervision visit

When the supervisor meets the guardian for the first time it is important to check that the guardian understands that they now have a formal legal relationship with the adult. As well as having powers they also have responsibilities and must apply the principles of the Act. The supervisor should check the guardian is aware of the supervisory arrangements.

Although the first visit must be within three months of a guardianship order commencing, it may be necessary to visit sooner depending on the circumstances. This can be combined with care management review arrangements but remains a distinct supervisory function, which goes beyond the normal care management role. This is discussed more fully at 5.5. Visits should normally be by appointment, but in certain circumstances, it might be appropriate to carry out an unannounced visit, for example to assess the adult's living circumstances. Careful thought needs to be given to when such visits are needed.

In most cases a visit to the adult and the guardian can be done at the same time, but there may be circumstances where it would be best to keep them separate, for example, where there appears to be conflict between the guardian and the adult.

The guardian may not live in the same local authority area as the adult. It may be necessary to arrange for the local authority where the guardian lives to visit and carry out the supervisory role.

However, contact by phone, and meeting the guardian when they visit the adult, for instance, to attend periodic care management reviews, may be sufficient. This should be discussed with the line manager.

5.3 Information provided by guardians

The regulations state that a guardian or intervener must provide the local authority with any reports or other information about the personal welfare of the adult, or how their powers are being exercised. This will enable the local authority to carry out its supervisory functions.

The supervisor should have a checklist of the information they would wish to receive from guardians when meeting with guardians for the first time. These can be incorporated into a review template for subsequent meetings. The nature and extent of the information required should be guided by the adult's particular circumstances. A suggested checklist can be found in Appendix 3. The supervisor must also inform the guardian about what advice and level of support they can expect to receive from the supervisor.

Some private guardians have been fulfilling their caring role for the adult for many years and may see the supervisory role as an unnecessary intrusion. This may be for a variety of reasons. In these circumstances it may be necessary to emphasise that there is a legal duty for the guardian and the supervisor to carry out these functions and to focus on the potential benefits to the guardian and the adult.

Practice example of a private welfare guardian's views:

Mr G told us he had looked after his sister since their mother died in 1980. As the elder brother he felt the caring responsibility naturally fell to him. The only reason he took formal measures in 2008 was because he was advised by his solicitor that as more complex decisions were needed now about his sister's care, it would be best for there to be a guardian. He did not see the sense initially in there being a supervisor as he had been doing it all for so long and staff in the care home worked well with him. However, he had more difficulties later when his sister went into hospital for a while and medical staff ignored him. "They did not appear to understand the role of guardian". He told us that at this time the supervisor "listened well and made sensible suggestions" that helped resolve this difficulty.

If a guardian refuses to be supervised, further action should be identified to fit such circumstances. The supervisor should keep written records of attempts to hold meetings and the responses of the guardian to these overtures. The code of practice points out that the Act does not allow a local authority to issue a direction to a welfare guardian or other proxy. However, such information may be useful if it becomes necessary to return to court, either to apply to replace the guardian, or to request that the sheriff give directions under Section 3 of the Act.

5.4 Supervision and care management

Whilst the role of care manager and supervisor are different, they are complementary. Supervising guardians can be part of care management arrangements. The code of practice for local authorities suggests that a supervisor should ideally be someone who already knows the guardian and the adult. Nevertheless, it will be important for the allocated worker to make a distinction between the two roles with the guardian. The guardian needs to know what will be expected of them by the local authority in carrying out their supervisory responsibilities and what the guardian can expect of the local authority supervisor by way of advice, guidance and support.

The allocated worker should be able to combine assessing the needs of the adult and obtaining community care services to meet those needs, whilst ensuring that the decisions made by the guardian are in accordance with the principles of the Act.

Some social workers and guardians have identified times when there is a conflict in combining these separate roles, for instance, when the guardian is seeking to obtain more services from the local authority. Although the care manager recognises the principle of benefit they will also be required, in many instances, to apply the local authority's eligibility criteria. It would be sensible for the care manager/supervisor to discuss these situations with their line manager who would decide when to introduce a third party. The guardian should also be able to request a review in such circumstances.

5.5 Varying, recalling or renewing the powers

Throughout the period of the guardianship, the supervisor should consider whether the order can be varied, for instance, if more powers are required, or renewed. When required, supervisors should plan timeously with the guardian for the renewal of the order.

Likewise, supervisors should consider whether the criteria for guardianship continue to exist, either because the person has regained some or all of their capacity or because their personal welfare can be satisfactorily safeguarded or promoted without a guardianship order.

Many private guardians want to continue in this role, even when the view of the supervisor is that the welfare needs of the adult can be met without a welfare guardianship order. Private guardians have told us that having a formal role gives them authority when meeting care providers and others. They report feeling more confident that they will be contacted regularly and consulted before decisions are made.

Consulting close relatives before decisions are made about a person who lacks capacity should be enshrined in good practice in all care settings. Given the experience of many carers of not being routinely involved in decision making, guardianship can be viewed as having importance long after the initial trigger for the application has been resolved.

Practice example of a private welfare guardian:

Initially, Mrs T took out guardianship because she had concerns about another relative wanting access to her son. She had concerns that he would be in physical danger and felt there needed to be measures in place to protect him. She sought powers that would allow her to make decisions as to who he could be with. He had also just moved to his own tenancy and she felt that this placed him at increased risk. Several years later things had settled and the risk had gone but Mrs T told us: “Now, guardianship increases my confidence in that I can have more of a say in relation to the services my son receives.”

Procedures indicate that recall should be considered in certain circumstances, including the following:

- for local authority guardianships, when the personal welfare of the adult can be satisfactorily safeguarded or promoted without a guardianship order;
- whenever the adult regains capacity (except where capacity fluctuates, in which case there should be a discussion with the adult and all concerned about this decision, and whether a welfare power of attorney might be more appropriate); and
- in private guardianship when personal welfare of the adult can be satisfactorily safeguarded or promoted without a guardianship order and the guardian is happy that guardianship is no longer serving any useful function.

There may be circumstances where the supervisor has identified that a guardian, despite the support and guidance of the supervisor, is not acting in accordance with the principles of the Act and therefore may not be suitable to continue to carry out their role. Local authorities should have a procedure to follow in these situations. It may be necessary to go back to the sheriff court to replace the guardian, either with a local authority guardian or another person. Involving an independent advocate to support the adult to communicate their views will be important during such times. In complex situations where property and financial affairs are concerned it may be necessary to consult with the OPG, or where welfare matters are concerned, with the MWC. It might be necessary to return to the court to ask for directions under Section 3 of the Act.

6

Involvement of others

We previously highlighted the importance of involving an independent advocate to support the adult to communicate their views. The code of practice for local authorities advises that where the person has no family or friends to assist, it will be helpful to seek the support of advocacy services. They also have an important role to play when there are differences of view about the guardianship.

When the local authority is the guardian, supervisors should seek the views of the adult, their nearest relative, primary carer, named person and anyone else the sheriff has directed to be consulted about the adult's personal welfare, and also how the local authority guardian is exercising their functions.

There is an increasing trend for private applications to combine financial and welfare powers. As a result, the local authority and the OPG may supervise the same guardian. It is essential for both organisations to liaise with each other. There is an example in the code of practice for local authorities, Section 8.6, where planning for the sale of an adult's house is linked to planning for where the adult will reside in future.

7

Welfare and financial attorneys

Anyone can set up a welfare and/or financial power of attorney, provided they have capacity to do so. They can decide who will act on their behalf in the event they lose capacity and identify what should happen before the POA can begin to operate, although a financial power of attorney can begin to operate before capacity is lost if the adult wishes this. The POA must be registered with the OPG before the attorney can act on it. The granter may, for instance, require a doctor to confirm loss of capacity before the power of attorney can be registered by the OPG.

As the number of these types of proxy arrangements grows, care managers will have to work alongside and understand the role of welfare attorneys. When someone claims to have a welfare or financial power of attorney, the care manager should ask to see the certificate and accompanying documents, which show the powers that have been registered. Additionally, a notification of welfare and combined welfare and financial powers of attorney, are sent to each relevant local authority by the OPG, and should be appropriately stored for retrieval and reference, as required. Local authorities should have procedures in place for this and all relevant staff should be aware of these procedures and how to access this information. If the local authority is unable to provide staff with the information that is required, the local authority officer can contact the OPG to obtain this.

People with power of attorney must also abide by the principles of the Act. If a care manager becomes concerned that someone with a power of attorney may not be acting in accordance with the principles, and disagrees with the decisions made, and these cannot be resolved, they can apply to the sheriff for the welfare

attorney to be supervised. In some circumstances it may be necessary for the local authority to apply for welfare guardianship. The granting of guardianship powers effectively terminates similar powers granted under a POA.

8

Investigations

In all circumstances where there is a risk to the personal welfare of an adult, the local authority should investigate under Section 10(1) (c) or (d). There are no emergency powers available under the Act. If urgent action is necessary, consideration should be given to using powers under either the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Adult Support and Protection (Scotland) Act 2007.

Routine supervision by the local authority of welfare guardians appointed by foreign courts is not required by the Act. However, complaints may be investigated, and if necessary a local authority can apply to the sheriff to order supervision or to displace the foreign guardian. The complainant would also have recourse to the courts as a party claiming an interest in the welfare of the adult should their concerns about the exercise of the POA persist.

9

Notifying the Mental Welfare Commission

The code of practice for local authorities requires that a local authority should inform the MWC of the outcome of all investigations. If, following an investigation, the local authority decides that no further action is required, this should also be reported to the MWC. If the investigation was a result of a complaint received by a third party, they too should be advised of the outcome of the investigation. If the complainant is dissatisfied with the outcome, they should be advised of the role of the MWC and its power to investigate further.

The MWC also asks supervisors to report significant incidents to them. This includes situations where there is evidence of ill treatment, neglect or serious injury. If the concern is about a registered care service this should be reported to Social Care and Social Work Improvement Scotland (SCSWIS), from 1st April 2011.

The OPG and MWC also require to be notified by the supervisor of changes of address and the deaths of people on guardianship, or their guardian. The MWC routinely asks for the date and cause of death of the adult on guardianship and whether the supervisor was aware of any concerns about the care of the person.

Practice Examples are from interviews carried out for “Young people and welfare guardianship” and “Supervising guardians” – two themed reports available from the Mental Welfare Commission’s website: <http://www.mwcscot.org.uk/>

Appendix 1

Role of the Social Work Inspection Agency and Mental Welfare Commission

The Social Work Inspection Agency (SWIA) was established in April 2005 to work with others to continually improve social work services, so that they meet people's needs and the public have confidence in them. SWIA has completed performance inspections of all 32 local authority social work services. It has also undertaken criminal justice inspections, multi-agency inspections and a number of individual investigations.

28 From our inspection programme we have established a baseline from which to measure continuing progress and improvement in social work services. In all our inspections SWIA considered equality issues in respect of access to services, consultation and involvement of people who use services and their carers. Our work will continue under the new scrutiny body, Social Care and Social Work Improvement Scotland, to be set up from April 2011.

The Mental Welfare Commission (MWC) is an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. Our duties are set out in mental health and incapacity law. We are made up of people who have understanding and experience of mental illness and learning disability. Some of us have worked in healthcare, social care or the law. Some of us are carers or have used mental health and learning disability services ourselves.

The MWC believes that everyone with a mental illness, learning disability or other mental disorder should:

- be treated with dignity and respect;
- have the right to treatment that is allowed by law and fully meets professional standards;
- have the right to live free from abuse, neglect or discrimination;
- get the care and treatment that best suits his or her needs; and
- be enabled to lead as fulfilling a life as possible.

Appendix 2

AWI supervisor's review template to record meetings with guardian/s

Name of Person on Guardianship		DOB: / /	ID Number:
Current Address:			
Type of Guardianship:	Date Order started	Length of Order	Expected end date of Order (if any)
Welfare/Financial/Both			
Guardian/s Name	Guardian/s Address		Guardian/s Tel:
Supervisor's Name	Supervisor's Office Address		Supervisor's Tel:
Care Manager's Name	Care Manager's Office Address		Care Manager's Tel:
(If different from supervisor)			
Date of this Meeting	/ /	Date of Last Meeting	/ /
Powers Granted			
Brief description of how the powers are being used.			

Note any changes in circumstances since the last review.		
Views of the guardian/s on care and support arrangements (including supervisory arrangements).		
Views of the Supervisor/Care Manager.		
Are all the powers still required? (Note what decisions are made/how the powers are used. If no powers are used is the Order still necessary?)		
Are all the powers adequate? (Note if any more powers should be sought)		
Are all the powers being used in line with the principles? (Do they benefit the adult? Are the views of the person on guardianship and the carers known and taken into account? Are only those decisions made that the adult lacks capacity to make? Are they offered choices? Do the decisions take into account less restrictive alternatives? Is the adult encouraged to develop capacity to make their own decisions?) If no to any of these, how is this to be addressed?		
Are any powers delegated to care staff?		
Are any changes to the Order or care arrangements required? (If yes, how will these be addressed?)		
Any other relevant information.		
Supervisor's Signature	Date Minute Completed	Date of Next 6 Monthly Review
	/ /	/ /

Copied to the guardian/s (and the Mental Welfare Commission if requested)

Appendix 3

Checklist of the information a supervisor would wish to receive from guardians

(This checklist could also be used as the basis for an agenda for review meetings)

The information a supervisor would wish to receive from guardians might include details of:

1. the guardianship order as set out on the certificate, including length, powers, and other arrangements such as substitute guardians;
2. any contact details/addresses of adult and guardian/s and changes to these;
3. the powers the guardian wishes to exercise and how to record these;
4. the powers the guardian wishes to delegate to others such as care staff;
5. awareness of the principles and how the guardian is intending to apply:
 - benefit to the adult
 - past and present wishes of the adult
 - consulting carers and other relevant individuals
 - using power in the least restrictive way to achieve goals
 - promoting/developing the adult's own skills and ability to make decisions and choices;

6. discussion on actions to follow any significant events/accidents or incidents involving the person who lacks capacity;
7. the level of contact with the person who lacks capacity and their carers/others; and
8. plans for the future – changes planned in care arrangements, plans for the substitute guardian if any, supervision and review dates and renewal dates.

Supervisors may wish to provide private guardians with contact details of the supervisor and any contacts when they are not available. They should provide information on how to access the relevant codes of practice.

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This guide is available in pdf format on our websites:

www.swia.gov.uk

www.scswis.com

www.mwscot.org.uk

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