

dignity & rights ethical treat respect ca & equality

STATISTICAL MONITORING

Adults with incapacity monitoring 2013-14

What is welfare guardianship?

By law, if an adult is unable to make key decisions or take necessary actions to safeguard his or her own welfare, a court can appoint a 'welfare guardian' to do this for his or her. Welfare guardians can make decisions about where a person lives, as well as about their personal and medical care.

The welfare guardian might be a relative, friend or a carer. The court can also appoint The Chief Social Work Officer of a local authority to be a person's welfare guardian. The law that sets out the role and responsibilities of guardians is the Adults with Incapacity Act (Scotland) 2000.

Local authorities have a duty under the act to supervise all welfare guardians and to visit the guardian and the adult at regular intervals.

Local authorities also have a duty to make an application for welfare guardianship where it is needed and nobody else is doing so.

Contents

| | |
|---|----|
| 1. Overview of the Use of the Adults with Incapacity (Scotland) Act 2000 | 3 |
| 2. Geographic variations in the use of welfare guardianship 2013/14..... | 5 |
| 3. Age and diagnosis of people placed on guardianship..... | 8 |
| 4. Duration of guardianship orders applied for by applicant..... | 20 |
| 4.1 Variations in indefinite orders by age and diagnosis | 20 |
| 4.2 Geographic variations in orders approved on an indefinite basis | 22 |
| 5. Our visits to adults on guardianship | 27 |
| 6. Adults with Incapacity (Scotland) Act 2000, 2013-2014, Section 48 (regulated treatments) and Section 50 (disagreements with proxy). | 30 |
| Table 2.1: Guardianship orders by local authority area 2013-14 | 7 |
| Table 3.1 All welfare guardianships 2013-14 by primary diagnosis and age group | 8 |
| Table 3.2 Welfare guardianship applications 2013-14 - local authority and private applications by primary cause of incapacity (%) | 11 |
| Table 3.3 Welfare guardianships 2013-14 - apparent renewals in year by local authority and private applications..... | 13 |
| Table 3.4 Welfare guardianship applications 2013-14 – local authority and private orders by primary cause of incapacity | 12 |
| Table 3.5 Welfare guardianship applications 2013-14 – All orders by local authority and primary cause of incapacity..... | 14 |
| Table 3.6 Welfare guardianship applications 2013-14 – Local authority orders by local authority and primary cause of incapacity | 16 |
| Table 3.7 Welfare guardianship applications 2013-14 – Private orders by local authority and primary cause of incapacity | 18 |
| Table 4.1 Welfare guardianship applications 2013-14 – indefinite orders as a percentage of primary cause of incapacity by local authority and private applications | 21 |
| Table 4.2 Duration of orders granted to local authorities 2013-14..... | 24 |
| Table 4.3 Duration of orders granted to private individuals 2013-14..... | 25 |
| Table 4.4 Duration of all orders granted 2013-214 | 26 |
| Table 5.1 Issues followed up after guardianship visits | 29 |
| Table 6.1 Section 48/50 requests and certificates issued by types of treatment | 30 |
| Figure 3.1 All welfare guardianships 2013-14 by primary diagnosis (%) | 8 |
| Figure 3.2 All welfare guardianships 2013-14 by age group and primary diagnosis (Number)..... | 9 |
| Figure 3.3 All welfare guardianships 2013-14 by age group and primary diagnosis (Percentage).. | 9 |
| Figure 3.4 Welfare guardianship applications 2013-14 - local authority and private applications by primary cause of incapacity (%) | 11 |
| Figure 4.1 Welfare guardianship applications 2013-14 – indefinite orders as a percentage of primary cause of incapacity by local authority and private applications | 21 |

1. Overview of the Use of the Adults with Incapacity (Scotland) Act 2000

Our monitoring of the use of the welfare provisions of the Adults with Incapacity (Scotland) Act 2000 is a result of our functions under the Act.

We receive all statutory forms relating to use of welfare provisions, visit some people on guardianship, provide advice and good practice guidance on the operation of the Act and also investigate circumstances where an adult with incapacity may be at risk.

We are part of the framework of legal safeguards that are in place to protect the rights of people on welfare guardianship, intervention orders, and powers of attorney. We also monitor the use of Part 5 of the Act relating to consent to medical treatment and research.

Here you can review our findings from these monitoring activities. The main messages are:

- We looked into the use of welfare guardianship under incapacity legislation. The number of new and existing orders continues to rise. In the past year there has been a further rise of 9.6% in new applications granted. This follows a 9% increase the previous year and represents a 58% increase over past 4 years. In 2013-14 this increase was entirely down to the increase in private applications and underscores the difficulties for local authorities as their statutory duties under the Act are in response to a demand led system over which they have no control.
- The Scottish average for approved welfare guardianship applications stood at 48 per 100,000 up from 44 in 2012/13. Dundee, Glasgow and Stirling showed the highest per-capita rates of new orders at 76, 71 and 68 per 100,000 respectively. Stirling (+96%), Scottish Borders (+76%), South Ayrshire (+72%) and West Lothian (+68%) all had very significant increases in the numbers of new orders compared to those in 2012/13.
- There was a further significant reduction in the granting of orders on an indefinite basis – down from 45% in 2011/12 and 35% in 2012/13, to 32% in the past year. Local authority approved applications granted on an indefinite basis remained at essentially the same level as in 2012/13 at 26%. Some local authorities, however, had very high rates of orders approved on an indefinite basis – including Glasgow (64%), Dundee (61%), and Aberdeen City (53%). What is striking is the different rates between authorities, with City of Edinburgh, North Ayrshire and Dumfries and Galloway applications approved on an indefinite basis in only 7% of all cases, and West Lothian and North Lanarkshire in 8% of cases. Eight authorities had rates at 50% or higher.
- The percentage of orders granted where the cause of the adult's incapacity was dementia fell to 45%, down from 46% the previous year. Conversely,

there was an increase from 41% to 44% of orders where the incapacity was caused by a learning disability. This is the first year where we have seen welfare guardianship being used on an almost equal basis for those whose incapacity was as a result of dementia or learning disability. This has been a continuing trend over the past several years where welfare guardianship is being used for an increasingly younger population.

- Courts dealt with 83% of applications within two months compared to 82% last year.
- In 2013/14 we visited 593 adults on welfare guardianship, a rise of 6% on last year: 39% were living in their own homes, 38% were resident in a care home, 15% lived in supported tenancies and 5% were in hospital. Concerns were noted on 25% (148) of visits: In 14% of our visits we engaged in further work after the visit following up concerns or queries with guardians, supervising local authority staff and/or carers.

The following were some of the more serious concerns raised:

- ❖ With 7% (40) of the adults visited, it was apparent to our visitor that the Principles of the Act were not being fully respected in the way the adult was being cared for
- ❖ 15 adults were subject to restraint or seclusion without proper authorisation in guardianship powers
- ❖ 2 adults had restrictions on who was allowed to visit without proper legal authorisation
- ❖ 9 adults needed further assistance with communication
- ❖ 13 adults had mobility problems which were not being adequately assessed or addressed
- ❖ 112 guardians did not appear to have been consulted about the adult's medical treatment despite having the power to consent to medical treatment (Part 5 of the 2003 Act)
- ❖ Care and treatment was felt to be good for 62% (368) of the adults; adequate for 36% (215), and poor for 10 adults
- ❖ Accommodation was felt to be good in 64% (382) cases, adequate in 33% (196) and poor in 3% (15).

2. Geographic variations in the use of welfare guardianship 2013/14

Our interest in this

We have reported over the years the variations in the use of guardianship from one local authority area to another and from one year to the next. Anyone with an interest may apply to be a welfare guardian and 77% of applicants in the past year were private individuals. Local authorities have a duty under section 57(2) of the Adults with Incapacity (Scotland) Act 2000 to take forward applications for welfare guardianship wherever necessary, in cases where no-one else is making an application or is likely to do so. While the reasons for differences between local authorities are complex, local authority staff should review this data to help ensure that the Act is being used where necessary in their area, both to safeguard the welfare and property of adults with incapacity and to assist relatives and carers. Local authority managers will also wish to examine trends which might have implications for workload management and planning.

What we found

In 2013/14 there was a further increase of over 9.6% in the number of welfare guardianship orders granted over the previous year. This follows a 9% increase the previous year and represents a 58% increase since 2009-10.

In 2013-14 this increase was entirely down to the increase in private applications and underscores the difficulties for local authorities as their statutory duties under the Act are largely in response to a demand led system over which they have no control.

Local authority applications remained fairly static at 487, down from 503 the previous year. This follows two years of increases in the number of local authority applications and is still at 8.5% higher than two years ago. The rate of increase in private applications, which slowed to 8.3% in 2012/13, increased to 14.2% in the past year. In 2013/14 local authority applications accounted for 23% of all applications, down from 26% and 25% in the previous two years. What has been evident, as will be discussed in detail later in this report, is that the growth in the use of welfare guardianship has been almost solely due to the increase in use for adults whose incapacity is related to their learning disability.

The table below shows the rate of approved orders for 2013/14 per 100,000 population over 16. The rates ranged from 13 in the Western Isles, 16 in Shetland, 18 in Moray and 21 in Clackmannan, to 76 in Dundee, 71 in Glasgow and 68 in Stirling. The Scottish average rate was 48 (37 private and 11 local authority). This is up from 44 per 100,000 in 2012/13.

While there was just under a 10% increase in approved applications across Scotland, there were considerable variations across the country. Seven local authority areas saw increases in approved orders of 50% or greater, with the highest increases evident in Stirling (96%), Scottish Borders (76%), South Ayrshire (72%) and West Lothian (68%). Dundee, Glasgow, Stirling and Renfrewshire had the highest per capita rates.

Approved orders fell by over 53% in Clackmannanshire, 48% in East Lothian and 33% in Moray.

The above, once again, demonstrates how difficult it must be for local authorities to plan and ensure an adequate mental health officer response when they have to react to such dramatic and unanticipated changes, usually increases, in the number of applications, most of which (77%), were from private applicants in the past year.

The variations in approved applications made by local authorities (not counting those authorities with fewer than 10 approved applications) ranged from increases of 117% in Stirling, 91% in Renfrewshire, 44% in West Lothian and 67% in the City of Edinburgh, to decreases of 33% in Aberdeenshire, 28% in Glasgow and 24% in Highland.

Table 2.1: Guardianship orders by local authority area 2013-14

| | Guardianships granted 2013-2014 | | | | | |
|-----------------------|---------------------------------|---------|------|--------------------------------|---------|-----|
| | Local Authority | Private | All | Local Authority | Private | All |
| | No. | No. | No. | Rate per 100K 16+ Population** | | |
| Aberdeen City | 15 | 57 | 72 | 8 | 30 | 37 |
| Aberdeenshire | 10 | 65 | 75 | 5 | 31 | 36 |
| Angus | 9 | 23 | 32 | 9 | 24 | 33 |
| Argyll and Bute | 8 | 17 | 25 | 11 | 23 | 34 |
| City of Edinburgh | 30 | 86 | 116 | 7 | 21 | 28 |
| Clackmannanshire | 2 | 7 | 9 | 5 | 17 | 21 |
| Dumfries and Galloway | 14 | 32 | 46 | 11 | 25 | 36 |
| Dundee City | 38 | 56 | 94 | 31 | 45 | 76 |
| East Ayrshire | 22 | 26 | 48 | 22 | 26 | 47 |
| East Dunbartonshire | 2 | 34 | 36 | 2 | 39 | 41 |
| East Lothian | 10 | 21 | 31 | 12 | 26 | 38 |
| East Renfrewshire | 3 | 18 | 21 | 4 | 25 | 29 |
| Eilean Siar | 0 | 3 | 3 | 0 | 13 | 13 |
| Falkirk | 23 | 29 | 52 | 18 | 23 | 41 |
| Fife | 57 | 103 | 160 | 19 | 34 | 53 |
| Glasgow City | 42 | 310 | 352 | 8 | 62 | 71 |
| Highland | 35 | 77 | 112 | 18 | 40 | 58 |
| Inverclyde | 3 | 15 | 18 | 4 | 22 | 27 |
| Midlothian | 5 | 12 | 17 | 7 | 18 | 25 |
| Moray | 3 | 11 | 14 | 4 | 14 | 18 |
| North Ayrshire | 14 | 46 | 60 | 12 | 41 | 53 |
| North Lanarkshire | 25 | 138 | 163 | 9 | 50 | 60 |
| Orkney | 2 | 10 | 12 | 11 | 56 | 67 |
| Perth and Kinross | 9 | 62 | 71 | 7 | 51 | 58 |
| Renfrewshire | 21 | 68 | 89 | 15 | 47 | 62 |
| Scottish Borders | 8 | 22 | 30 | 8 | 23 | 32 |
| Shetland* | 1 | 2 | 3 | 5 | 11 | 16 |
| South Ayrshire | 7 | 48 | 55 | 7 | 51 | 58 |
| South Lanarkshire | 34 | 107 | 141 | 13 | 41 | 54 |
| Stirling | 13 | 38 | 51 | 17 | 51 | 68 |
| West Dunbartonshire | 9 | 29 | 38 | 12 | 39 | 51 |
| West Lothian | 13 | 56 | 69 | 9 | 40 | 49 |
| SCOTLAND | 487 | 1628 | 2115 | 11 | 37 | 48 |

*There were no Guardianships recorded for Shetland this year

**All figures rounded to nearest whole unit

3. Age and diagnosis of people placed on guardianship

Table 3.1 All welfare guardianships 2013-14 by primary diagnosis and age group

| Primary Diagnosis | Age Group | | | | | | | | | |
|--------------------------------|-----------|-----|-------|-----|-------|-----|-----|-----|-------|-----|
| | 16-24 | | 25-44 | | 45-64 | | 65+ | | Total | |
| | No. | % | No. | % | No. | % | No. | % | No. | % |
| Dementia | 0 | 0 | 1 | 0 | 52 | 13 | 889 | 90 | 942 | 45 |
| Learning Disability | 430 | 98 | 252 | 86 | 218 | 56 | 24 | 2 | 924 | 44 |
| Acquired Brain Injury | 9 | 2 | 25 | 9 | 47 | 12 | 34 | 3 | 115 | 5 |
| Alcohol Related Brain Disorder | 0 | 0 | 3 | 1 | 41 | 10 | 31 | 3 | 75 | 4 |
| Mental Illness | 0 | 0 | 7 | 2 | 25 | 6 | 14 | 1 | 46 | 2 |
| Other | 0 | 0 | 4 | 1 | 8 | 2 | 1 | 0 | 13 | 1 |
| Total | 439 | 100 | 292 | 100 | 391 | 100 | 993 | 100 | 2115 | 100 |

Figure 3.1 All welfare guardianships 2013-14 by primary diagnosis (%)

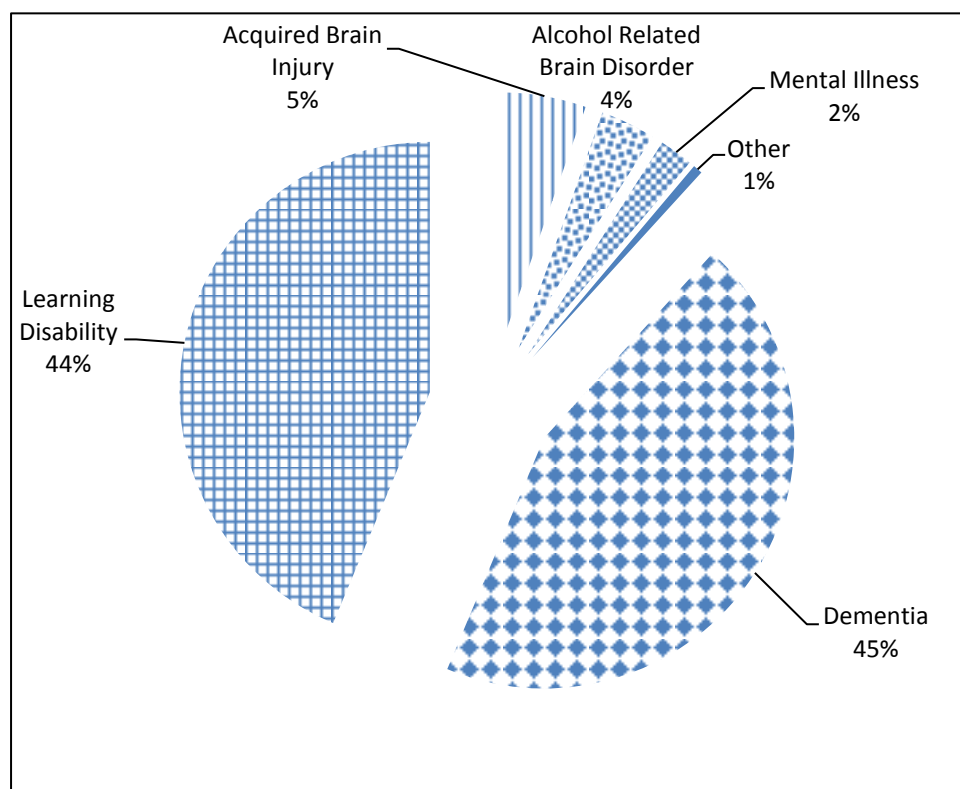


Figure 3.2 All welfare guardianships by age group and primary diagnosis (No.)

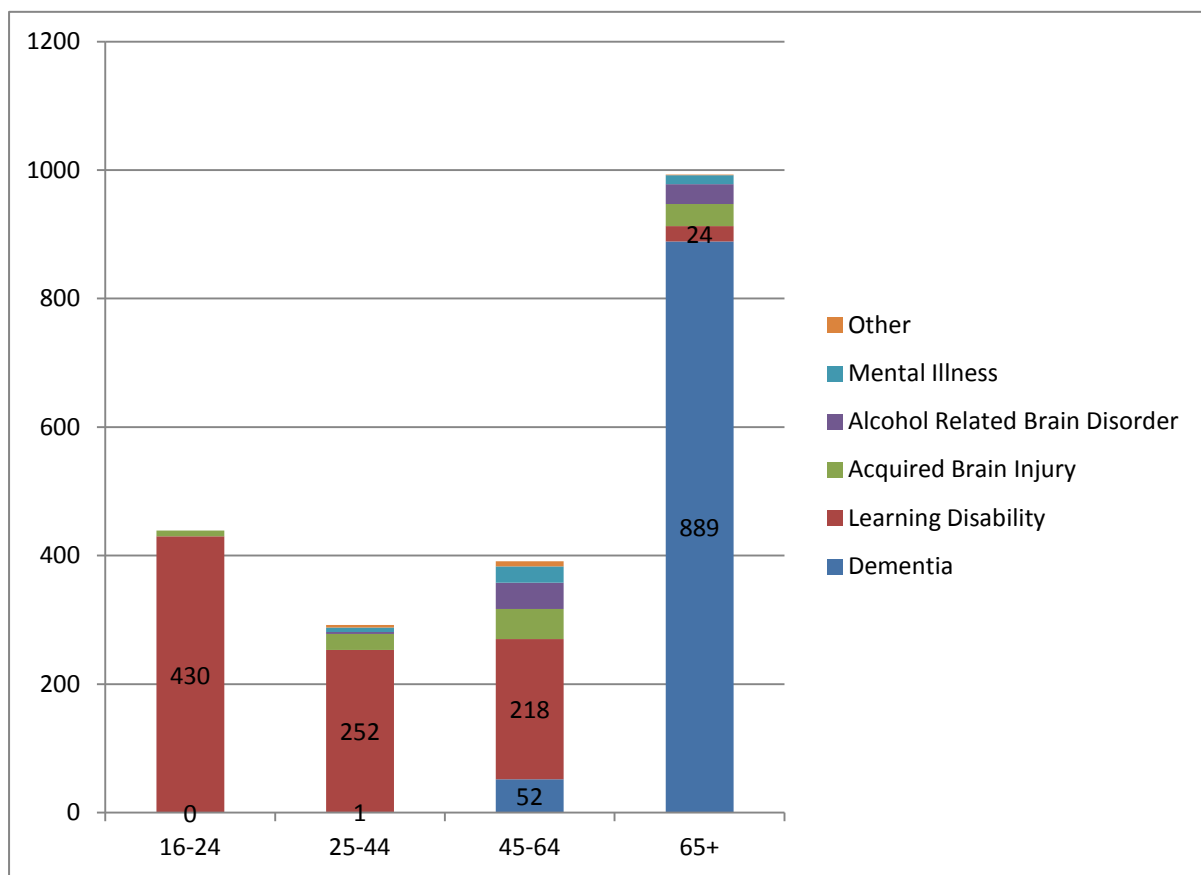
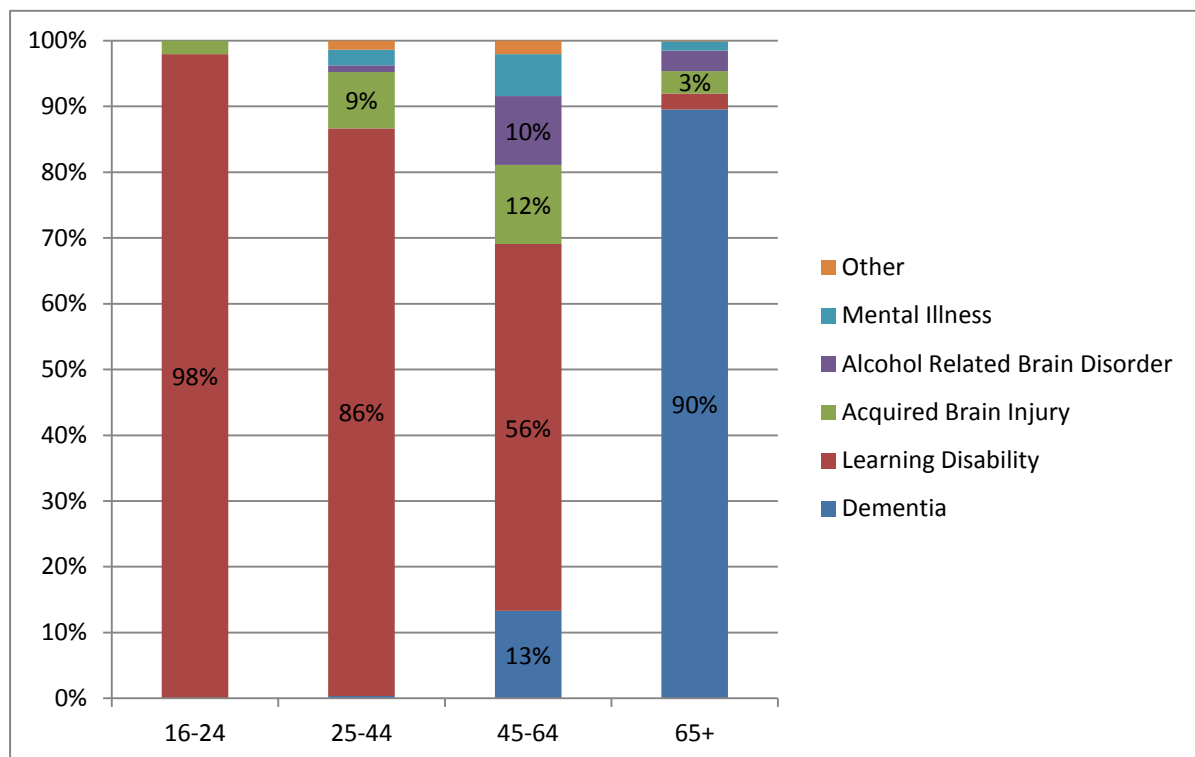


Figure 3.3 All welfare guardianships by age group and primary diagnosis (%)



Our interest in these figures

The above charts show the age at which adults with different causes of impaired capacity are placed on welfare guardianship under the provisions of the Adults with Incapacity (Scotland) Act 2000. There is, once again, variation in the patterns of usage of welfare guardianship in local authorities according to the diagnosis of the adults which caused their incapacity. The reasons for this would require focussed research in to local populations. This data should also be viewed in context of the length of time for which orders are granted for adults whose impaired capacity is a consequence of the different causes of incapacity.

What we found

We have seen a gradual decrease in the percentage of orders granted during the past few years where the primary cause of incapacity was dementia. In 2012/13 this decreased to 46%, down from 51% in the previous year and 55% of all orders in 2010/11. In 2013-14 we saw a further decrease to 45% of all orders. There was, conversely, a continued increase in the granting of orders for adults where the cause of incapacity was learning disability. In 2013/4 this rose to 44% of all orders, up from 41% the previous year, 37% in 2011/12 and 32% of all orders in 2010/11. This is a significant trend which has been evidenced in a relatively short period of time. In 2010/11 there was a gap of 23% between the use of orders for adults with dementia and those whose incapacity was related to their learning disability. In 2013/14 we had the first year where guardianship orders were granted on an almost equal basis for adults with dementia (44.5%) and adults with learning disability (43.7%).

In 2013/14, there was an 18% increase in the use of welfare guardianship for adults whose incapacity was related to their learning disability. There was only a 5% increase for adults with dementia. It may be that the increased use of Powers of Attorney which we have witnessed in the last several years is beginning to have a moderating effect on the number of people with dementia who require guardianship orders, given that the majority of Powers of Attorney are granted by people over 65 years of age.

We also looked at whether it might also be the case that the increased use of orders for people with learning disability is inflated due to the inclusion of those for whom the new application is, in effect, a renewal. While it was difficult to retrieve exact data on this, we looked at new guardianship orders which appeared to be renewals of pre-existing orders. As there were gaps and overlaps, at times, between the expiry of the old order and the granting of the new order, this complicated, to some extent, collating the data in respect of renewals. The following table sets out the approved orders in 2013/14 which appear to have been renewals.

Table 3.2 Welfare guardianship applications 2013-14 - local authority and private applications by primary cause of incapacity (%)

| | Primary diagnosis as percentage of all orders | | | |
|--------------------------------|---|------|---------|------|
| | Local authority | % | Private | % |
| Acquired Brain Injury | 32 | 7% | 83 | 5% |
| Alcohol Related Brain Disorder | 55 | 11% | 20 | 1% |
| Dementia/ Alzheimer's Disease | 208 | 43% | 734 | 45% |
| Learning Disability | 161 | 33% | 763 | 47% |
| Mental Illness | 26 | 5% | 20 | 1% |
| Other | 5 | 1% | 8 | 0% |
| Total | 487 | 100% | 1628 | 100% |

Figure 3.4 Welfare guardianship applications 2013-14 - local authority and private applications by primary cause of incapacity (%)

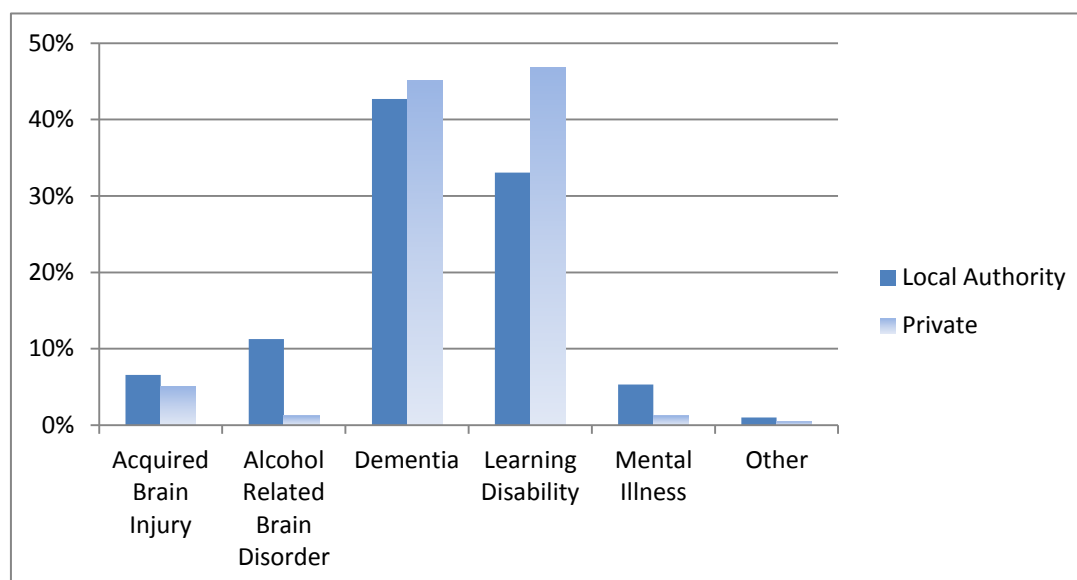


Table 3.3 Welfare guardianship applications 2013-14 – local authority and private orders by primary cause of incapacity

| | Acquired Brain Injury | | Alcohol Related Brain Disorder | | Dementia/ Alzheimer's Disease | | Learning Disability | | Mental Illness | | Other | | Total | |
|-----------------|-----------------------|----|--------------------------------|-----|-------------------------------|-----|---------------------|-----|----------------|----|-------|----|-------|------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Local Authority | 32 | 7% | 55 | 11% | 208 | 43% | 161 | 33% | 26 | 5% | 5 | 1% | 487 | 100% |
| Private | 83 | 5% | 20 | 1% | 734 | 45% | 763 | 47% | 20 | 1% | 8 | 0% | 1628 | 100% |
| Total | 115 | 5% | 75 | 4% | 942 | 45% | 924 | 44% | 46 | 2% | 13 | 1% | 2115 | 100% |

There were differences evident between those adults for whom local authorities (Chief Social Work Officers) were appointed guardians as opposed to private individuals when looking at the cause of incapacity for the adults on whom welfare guardianship was granted. A higher percentage of all the orders granted to private guardians was for adults with dementia (+2%) and learning disability (+14%) than was the case where the Chief Social Work Officer was appointed guardian. The percentage of all the orders granted where the Chief Social Work Officers was appointed guardian was higher when alcohol related brain damage (+10%), mental illness (+4%) and acquired brain injury (+2%) was the cause of incapacity.

In the past year, 47% (430) of all orders granted on adults with a learning disability were for those under 25 years of age. This is down from 48% in 2012/13, 49% in 2011/12 and 53% in 2010/11. Again, this is data which may have been affected by the higher use of renewals for adults with learning disability. Seventy four percent (682) of adults with learning disability placed on welfare guardianship in the past year were under the age of 45. For people with dementia, the percentage of orders granted where the adult was over 65 remained at essentially the same level as last year at 94%.

In the 25-44 age group, learning disability was the cause of incapacity in 86% of orders granted, with adults with Acquired Brain Injury and Alcohol-Related Brain Damage accounting for 10% of orders granted. In the 45-64 age-group, learning disability was the cause of incapacity in 56% of orders. Adults whose incapacity was related to Alcohol Related Brain Damage and Acquired Brain Injury combined accounted for 22% of the orders granted in this age-group.

As we have seen guardianship orders are being used more often for adults with a learning disability. Just under a half (47%) of all orders granted for adults with learning disability in 2013/14 were granted when the adults were under 25 years of age.

Table 3.4 Welfare guardianships 2013-14 - apparent renewals in year by local authority and private applications

| Primary Diagnosis | Private | Local Authority | Renewals |
|--------------------------------|---------|-----------------|----------|
| Acquired Brain Injury | 10 | 4 | 14 |
| Alcohol Related Brain Disorder | 1 | 13 | 14 |
| Dementia/ Alzheimer's Disease | 22 | 5 | 27 |
| Learning Disability | 62 | 50 | 112 |
| Mental Illness | | 6 | 6 |
| Other | 1 | 2 | 2 |
| Total | 96 | 80 | 176 |

If we subtract the total of apparent renewals from the total of new applications, we are left with 1939 new orders approved for people who had not previously been on guardianship. And what we see is that there remains a greater use of guardianship for adults with dementia (47%, 915 of all new orders) than for adults whose incapacity was caused by a learning disability (42%, 812 of all new orders). Given that there has been a decrease in the use of indefinite orders we are likely to see a further increase in the percentage of orders granted each year which are actually renewals of existing orders.

Table 3.5 Welfare guardianship applications 2013-14 – All orders by local authority and primary cause of incapacity

| All orders | Acquired Brain Injury | | Alcohol Related Brain Disorder | | Dementia/ Alzheimer's Disease | | Learning Disability | | Mental Illness | | Other | | Total | |
|-----------------------|-----------------------|-----|--------------------------------|-----|-------------------------------|-----|---------------------|-----|----------------|----|-------|----|-------|------|
| | No | % | No | % | No | % | No | % | No | % | No | % | No | % |
| Aberdeen City | 4 | 6% | 1 | 1% | 28 | 39% | 38 | 53% | 1 | 1% | | 0% | 72 | 100% |
| Aberdeenshire | 2 | 3% | 1 | 1% | 30 | 40% | 41 | 55% | 1 | 1% | | 0% | 75 | 100% |
| Angus | 6 | 19% | | 0% | 14 | 44% | 10 | 31% | 1 | 3% | 1 | 3% | 32 | 100% |
| Argyll and Bute | 1 | 4% | | 0% | 10 | 40% | 12 | 48% | 2 | 8% | | 0% | 25 | 100% |
| City of Edinburgh | 8 | 7% | 8 | 7% | 51 | 44% | 47 | 41% | 1 | 1% | 1 | 1% | 116 | 100% |
| Clackmannanshire | 1 | 11% | | 0% | 5 | 56% | 3 | 33% | | 0% | | 0% | 9 | 100% |
| Dumfries and Galloway | 4 | 9% | 1 | 2% | 13 | 28% | 26 | 57% | 2 | 4% | | 0% | 46 | 100% |
| Dundee City | 1 | 1% | 2 | 2% | 47 | 50% | 40 | 43% | 4 | 4% | | 0% | 94 | 100% |
| East Ayrshire | 4 | 8% | 5 | 10% | 17 | 35% | 21 | 44% | | 0% | 1 | 2% | 48 | 100% |
| East Dunbartonshire | 1 | 3% | | 0% | 13 | 36% | 20 | 56% | 1 | 3% | 1 | 3% | 36 | 100% |
| East Lothian | 1 | 3% | 3 | 10% | 12 | 39% | 14 | 45% | 1 | 3% | | 0% | 31 | 100% |
| East Renfrewshire | 2 | 10% | 1 | 5% | 13 | 62% | 5 | 24% | | 0% | | 0% | 21 | 100% |
| Eilean Siar | 1 | 33% | | 0% | | 0% | 2 | 67% | | 0% | | 0% | 3 | 100% |
| Falkirk | 3 | 6% | 1 | 2% | 20 | 38% | 28 | 54% | | 0% | | 0% | 52 | 100% |
| Fife | 8 | 5% | 12 | 8% | 74 | 46% | 62 | 39% | 3 | 2% | 1 | 1% | 160 | 100% |
| Glasgow City | 19 | 5% | 6 | 2% | 168 | 48% | 152 | 43% | 5 | 1% | 2 | 1% | 352 | 100% |
| Highland | 3 | 3% | 4 | 4% | 61 | 54% | 40 | 36% | 4 | 4% | | 0% | 112 | 100% |
| Inverclyde | | 0% | | 0% | 8 | 44% | 10 | 56% | | 0% | | 0% | 18 | 100% |
| Midlothian | 2 | 12% | 1 | 6% | 4 | 24% | 8 | 47% | 1 | 6% | 1 | 6% | 17 | 100% |
| Moray | 1 | 7% | 1 | 7% | 5 | 36% | 7 | 50% | | 0% | | 0% | 14 | 100% |
| North Ayrshire | 3 | 5% | 4 | 7% | 28 | 47% | 23 | 38% | 2 | 3% | | 0% | 60 | 100% |

| | | | | | | | | | | | | | | |
|---------------------|-----|----|----|----|-----|-----|-----|------|----|----|----|----|------|------|
| North Lanarkshire | 12 | 7% | 2 | 1% | 64 | 39% | 81 | 50% | 4 | 2% | | 0% | 163 | 100% |
| Orkney | 1 | 8% | | 0% | 3 | 25% | 7 | 58% | 1 | 8% | | 0% | 12 | 100% |
| Perth and Kinross | 2 | 3% | 3 | 4% | 30 | 42% | 31 | 44% | 4 | 6% | 1 | 1% | 71 | 100% |
| Renfrewshire | 8 | 9% | 2 | 2% | 40 | 45% | 38 | 43% | 1 | 1% | | 0% | 89 | 100% |
| Scottish Borders | | 0% | 2 | 7% | 8 | 27% | 18 | 60% | 1 | 3% | 1 | 3% | 30 | 100% |
| Shetland | | 0% | | 0% | | 0% | 3 | 100% | | 0% | | 0% | 3 | 100% |
| South Ayrshire | 3 | 5% | 1 | 2% | 33 | 60% | 17 | 31% | | 0% | 1 | 2% | 55 | 100% |
| South Lanarkshire | 6 | 4% | 9 | 6% | 69 | 49% | 55 | 39% | | 0% | 2 | 1% | 141 | 100% |
| Stirling | 2 | 4% | 4 | 8% | 23 | 45% | 19 | 37% | 3 | 6% | | 0% | 51 | 100% |
| West Dunbartonshire | 2 | 5% | 1 | 3% | 22 | 58% | 13 | 34% | | 0% | | 0% | 38 | 100% |
| West Lothian | 4 | 6% | | 0% | 29 | 42% | 33 | 48% | 3 | 4% | | 0% | 69 | 100% |
| Total | 115 | 5% | 75 | 4% | 942 | 45% | 924 | 44% | 46 | 2% | 13 | 1% | 2115 | 100% |

Table 3.6 Welfare guardianship applications 2013-14 – Local authority orders by local authority and primary cause of incapacity

| Local authority orders | Acquired Brain Injury | | Alcohol Related Brain Disorder | | Dementia/ Alzheimer's Disease | | Learning Disability | | Mental Illness | | Other | | Total | |
|------------------------|-----------------------|-----|--------------------------------|-----|-------------------------------|-----|---------------------|------|----------------|-----|-------|-----|-------|------|
| | No | % | No | % | No | % | No | % | No | % | No | % | No | % |
| Aberdeen City | 3 | 20% | 1 | 7% | 8 | 53% | 3 | 20% | | 0% | | 0% | 15 | 100% |
| Aberdeenshire | 1 | 10% | 1 | 10% | 5 | 50% | 2 | 20% | 1 | 10% | | 0% | 10 | 100% |
| Angus | 1 | 11% | | 0% | 1 | 11% | 6 | 67% | 1 | 11% | | 0% | 9 | 100% |
| Argyll and Bute | | 0% | | 0% | 6 | 75% | | 0% | 2 | 25% | | 0% | 8 | 100% |
| City of Edinburgh | 1 | 3% | 7 | 23% | 12 | 40% | 9 | 30% | 1 | 3% | | 0% | 30 | 100% |
| Clackmannanshire | 1 | 50% | | 0% | | 0% | 1 | 50% | | 0% | | 0% | 2 | 100% |
| Dumfries and Galloway | 1 | 7% | 1 | 7% | 3 | 21% | 7 | 50% | 2 | 14% | | 0% | 14 | 100% |
| Dundee City | | 0% | 1 | 3% | 15 | 39% | 18 | 47% | 4 | 11% | | 0% | 38 | 100% |
| East Ayrshire | 1 | 5% | 3 | 14% | 8 | 36% | 9 | 41% | | 0% | 1 | 5% | 22 | 100% |
| East Dunbartonshire | | 0% | | 0% | 1 | 50% | | 0% | | 0% | 1 | 50% | 2 | 100% |
| East Lothian | 1 | 10% | 3 | 30% | 2 | 20% | 3 | 30% | 1 | 10% | | 0% | 10 | 100% |
| East Renfrewshire | 1 | 33% | 1 | 33% | | 0% | 1 | 33% | | 0% | | 0% | 3 | 100% |
| Falkirk | 1 | 4% | 1 | 4% | 11 | 48% | 10 | 43% | | 0% | | 0% | 23 | 100% |
| Fife | 3 | 5% | 9 | 16% | 30 | 53% | 11 | 19% | 3 | 5% | 1 | 2% | 57 | 100% |
| Glasgow City | 4 | 10% | 3 | 7% | 26 | 62% | 9 | 21% | | 0% | | 0% | 42 | 100% |
| Highland | 1 | 3% | 3 | 9% | 20 | 57% | 10 | 29% | 1 | 3% | | 0% | 35 | 100% |
| Inverclyde | | 0% | | 0% | | 0% | 3 | 100% | | 0% | | 0% | 3 | 100% |
| Midlothian | | 0% | 1 | 20% | 1 | 20% | 2 | 40% | | 0% | 1 | 20% | 5 | 100% |
| Moray | 1 | 33% | | 0% | 1 | 33% | 1 | 33% | | 0% | | 0% | 3 | 100% |
| North Ayrshire | | 0% | 3 | 21% | 7 | 50% | 3 | 21% | 1 | 7% | | 0% | 14 | 100% |
| North Lanarkshire | 2 | 8% | 1 | 4% | 7 | 28% | 13 | 52% | 2 | 8% | | 0% | 25 | 100% |

| | | | | | | | | | | | | | | |
|---------------------|----|-----|----|-----|-----|-----|-----|------|----|-----|---|----|-----|------|
| Orkney | | 0% | | 0% | | 0% | 1 | 50% | 1 | 50% | | 0% | 2 | 100% |
| Perth and Kinross | | 0% | 1 | 11% | 5 | 56% | 1 | 11% | 2 | 22% | | 0% | 9 | 100% |
| Renfrewshire | 3 | 14% | 2 | 10% | 7 | 33% | 8 | 38% | 1 | 5% | | 0% | 21 | 100% |
| Scottish Borders | | 0% | 1 | 13% | 2 | 25% | 4 | 50% | 1 | 13% | | 0% | 8 | 100% |
| Shetland | | 0% | | 0% | | 0% | 1 | 100% | | 0% | | 0% | 1 | 100% |
| South Ayrshire | 1 | 14% | 1 | 14% | 3 | 43% | 2 | 29% | | 0% | | 0% | 7 | 100% |
| South Lanarkshire | 3 | 9% | 7 | 21% | 8 | 24% | 15 | 44% | | 0% | 1 | 3% | 34 | 100% |
| Stirling | | 0% | 3 | 23% | 7 | 54% | 1 | 8% | 2 | 15% | | 0% | 13 | 100% |
| West Dunbartonshire | 2 | 22% | 1 | 11% | 4 | 44% | 2 | 22% | | 0% | | 0% | 9 | 100% |
| West Lothian | | 0% | | 0% | 8 | 62% | 5 | 38% | | 0% | | 0% | 13 | 100% |
| Grand Total | 32 | 7% | 55 | 11% | 208 | 43% | 161 | 33% | 26 | 5% | 5 | 1% | 487 | 100% |
| Aberdeen City | 3 | 20% | 1 | 7% | 8 | 53% | 3 | 20% | | 0% | | 0% | 15 | 100% |

Table 3.7 Welfare guardianship applications 2013-14 – Private orders by local authority and primary cause of incapacity

| Private orders | Acquired Brain Injury | | Alcohol Related Brain Disorder | | Dementia/ Alzheimer's Disease | | Learning Disability | | Mental Illness | | Other | | Total | |
|-----------------------|-----------------------|-----|--------------------------------|----|-------------------------------|-----|---------------------|-----|----------------|----|-------|----|-------|------|
| | No | % | No | % | No | % | No | % | No | % | No | % | No | % |
| Aberdeen City | 1 | 2% | | 0% | 20 | 35% | 35 | 61% | 1 | 2% | | 0% | 57 | 100% |
| Aberdeenshire | 1 | 2% | | 0% | 25 | 38% | 39 | 60% | | 0% | | 0% | 65 | 100% |
| Angus | 5 | 22% | | 0% | 13 | 57% | 4 | 17% | | 0% | 1 | 4% | 23 | 100% |
| Argyll and Bute | 1 | 6% | | 0% | 4 | 24% | 12 | 71% | | 0% | | 0% | 17 | 100% |
| City of Edinburgh | 7 | 8% | 1 | 1% | 39 | 45% | 38 | 44% | | 0% | 1 | 1% | 86 | 100% |
| Clackmannanshire | | 0% | | 0% | 5 | 71% | 2 | 29% | | 0% | | 0% | 7 | 100% |
| Dumfries and Galloway | 3 | 9% | | 0% | 10 | 31% | 19 | 59% | | 0% | | 0% | 32 | 100% |
| Dundee City | 1 | 2% | 1 | 2% | 32 | 57% | 22 | 39% | | 0% | | 0% | 56 | 100% |
| East Ayrshire | 3 | 12% | 2 | 8% | 9 | 35% | 12 | 46% | | 0% | | 0% | 26 | 100% |
| East Dunbartonshire | 1 | 3% | | 0% | 12 | 35% | 20 | 59% | 1 | 3% | | 0% | 34 | 100% |
| East Lothian | | 0% | | 0% | 10 | 48% | 11 | 52% | | 0% | | 0% | 21 | 100% |
| East Renfrewshire | 1 | 6% | | 0% | 13 | 72% | 4 | 22% | | 0% | | 0% | 18 | 100% |
| Eilean Siar | 1 | 33% | | 0% | | 0% | 2 | 67% | | 0% | | 0% | 3 | 100% |
| Falkirk | 2 | 7% | | 0% | 9 | 31% | 18 | 62% | | 0% | | 0% | 29 | 100% |
| Fife | 5 | 5% | 3 | 3% | 44 | 43% | 51 | 50% | | 0% | | 0% | 103 | 100% |
| Glasgow City | 15 | 5% | 3 | 1% | 142 | 46% | 143 | 46% | 5 | 2% | 2 | 1% | 310 | 100% |
| Highland | 2 | 3% | 1 | 1% | 41 | 53% | 30 | 39% | 3 | 4% | | 0% | 77 | 100% |
| Inverclyde | | 0% | | 0% | 8 | 53% | 7 | 47% | | 0% | | 0% | 15 | 100% |
| Midlothian | 2 | 17% | | 0% | 3 | 25% | 6 | 50% | 1 | 8% | | 0% | 12 | 100% |
| Moray | | 0% | 1 | 9% | 4 | 36% | 6 | 55% | | 0% | | 0% | 11 | 100% |
| North Ayrshire | 3 | 7% | 1 | 2% | 21 | 46% | 20 | 43% | 1 | 2% | | 0% | 46 | 100% |

| | | | | | | | | | | | | | | |
|---------------------|----|-----|----|----|-----|-----|-----|------|----|----|---|----|------|------|
| North Lanarkshire | 10 | 7% | 1 | 1% | 57 | 41% | 68 | 49% | 2 | 1% | | 0% | 138 | 100% |
| Orkney | 1 | 10% | | 0% | 3 | 30% | 6 | 60% | | 0% | | 0% | 10 | 100% |
| Perth and Kinross | 2 | 3% | 2 | 3% | 25 | 40% | 30 | 48% | 2 | 3% | 1 | 2% | 62 | 100% |
| Renfrewshire | 5 | 7% | | 0% | 33 | 49% | 30 | 44% | | 0% | | 0% | 68 | 100% |
| Scottish Borders | | 0% | 1 | 5% | 6 | 27% | 14 | 64% | | 0% | 1 | 5% | 22 | 100% |
| Shetland | | 0% | | 0% | | 0% | 2 | 100% | | 0% | | 0% | 2 | 100% |
| South Ayrshire | 2 | 4% | | 0% | 30 | 63% | 15 | 31% | | 0% | 1 | 2% | 48 | 100% |
| South Lanarkshire | 3 | 3% | 2 | 2% | 61 | 57% | 40 | 37% | | 0% | 1 | 1% | 107 | 100% |
| Stirling | 2 | 5% | 1 | 3% | 16 | 42% | 18 | 47% | 1 | 3% | | 0% | 38 | 100% |
| West Dunbartonshire | | 0% | | 0% | 18 | 62% | 11 | 38% | | 0% | | 0% | 29 | 100% |
| West Lothian | 4 | 7% | | 0% | 21 | 38% | 28 | 50% | 3 | 5% | | 0% | 56 | 100% |
| Grand Total | 83 | 5% | 20 | 1% | 734 | 45% | 763 | 47% | 20 | 1% | 8 | 0% | 1628 | 100% |

4. Duration of guardianship orders applied for by applicant

Our interest in this

We have safeguarding duties in relation to people who fall under the protection of the Adults with Incapacity (Scotland) Act 2000. We examine the use of welfare guardianship for adults with a mental illness, learning disability or other related conditions (including dementia) to determine how and for whom the 2000 Act is being used. This is to help us assess how best to allocate our resources in visiting adults on welfare guardianship. It also assists local area management in reviewing how and for whom Part 6 of the AWI Act is being used in their area. The tables below show numbers of approved welfare guardianship orders broken down by the identified causes of the adult's incapacity and the length for which the orders have been granted. The first of these tables relates to orders granted to local authority applicants. The second relates to private applicants. The table at the end of this section breaks down the use of welfare guardianship by cause of incapacity for both private and local authority applications in each local authority area.

We have raised concerns in previous reports about the high percentage of orders granted on an indefinite basis. Our concern is that the lack of automatic, periodic judicial scrutiny of approved orders puts the onus on the individual or another party with an interest to challenge the order. We do not think this is in keeping with human rights legislation if the adult is deprived of liberty by the order. The graph below shows the percentage of orders by primary cause of incapacity granted on an indefinite basis, broken down into orders granted to local authority and private applicants. Particularly concerning, as we have reported in the past, is the seeking and granting of orders on an indefinite basis for young adults with learning disability.

What we found

4.1 Variations in indefinite orders by age and diagnosis

Five years ago we reported that 71% of all Welfare Guardianship orders were granted on an indefinite basis. In 2010/11 this fell to 63%; in 2011/12, to 45%; in 2012/13, to 35% and, in the past year, 32%. Over the four years between 2009-10 and 2013-14, the percent of orders granted on an indefinite basis has decreased by 39.0 percentage points. This represents a 55% decrease in the number of indefinite orders, a trend we are pleased to note. This is still, however, an area that needs a fundamental change in the law and continued monitoring in the interim.

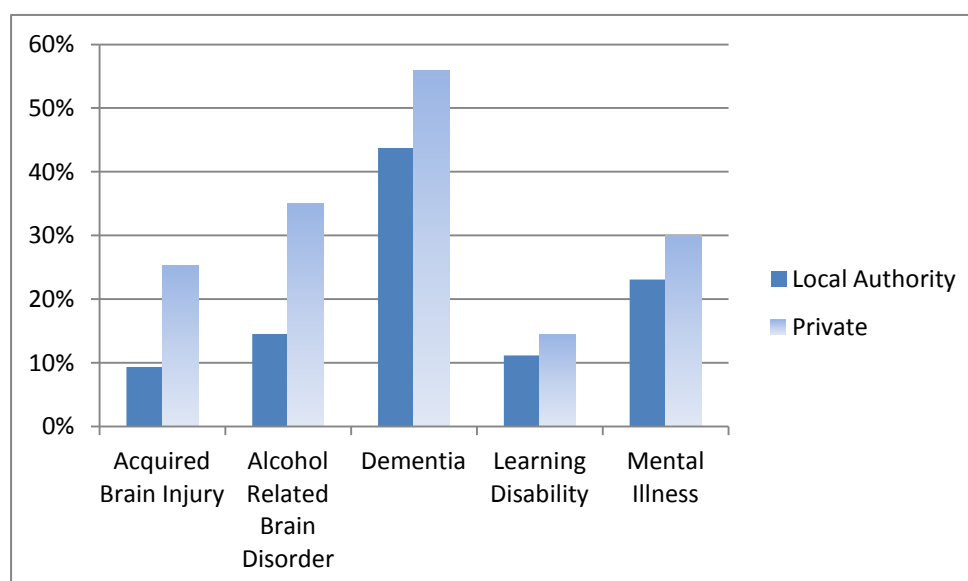
As of 31/3/2014 there were 4668 adults on indefinite welfare guardianship orders, 54% of the total of extant welfare guardianship orders. Four hundred and fifty eight (10%) of these adults were under the age of 25 and 25% (1151) under 45 years of age.

Indefinite orders, in general, were much more likely to be granted where there was a private guardian. In 2013/14, 34% of all orders granted to private guardians were granted on an indefinite basis; for local authorities this stood at 26%.

Table 4.1 Welfare guardianship applications 2013-14 – indefinite orders as a percentage of primary cause of incapacity by local authority and private applications

| | Indefinite orders as percentage of primary diagnosis | | | |
|--------------------------------|--|-----|---------|-----|
| | Local authority | % | Private | % |
| Acquired Brain Injury | 3 | 9% | 21 | 25% |
| Alcohol Related Brain Disorder | 8 | 15% | 7 | 35% |
| Dementia/ Alzheimer's Disease | 91 | 44% | 410 | 56% |
| Learning Disability | 18 | 11% | 111 | 15% |
| Mental Illness | 6 | 23% | 6 | 30% |
| Other | | 0% | 3 | 38% |
| Total | 126 | 26% | 558 | 34% |

Figure 4.1 Welfare guardianship applications 2013-14 – indefinite orders as a percentage of primary cause of incapacity by local authority and private applications



In 2013-14, 47% (763) of all private guardianships were for individuals with learning disabilities, and of those, 15% (111) were placed on orders on an indefinite basis. Whereas for local authority applications, a smaller proportion, 33% (161), were for individuals with learning disabilities, and of those, 11% (18), were indefinite orders. Forty five percent (734) of all private guardianships were for individuals with dementia/Alzheimer's disease, and of those a larger proportion, 56% (410), were indefinite orders. For local authority applications 43% (208) were for individuals with dementia/Alzheimer's, and of those, 44% (91), were indefinite orders.

4.2 Geographic variations in orders approved on an indefinite basis

The granting of welfare guardianship orders on an indefinite basis varied quite dramatically from one local authority area to the next and this was the case in respect of those granted to both private parties as well as Chief Social Work Officers (CSWO).

In the latter case, in 12 authorities where the CSWO was appointed welfare guardian, less than 10% of the orders were granted on an indefinite basis. In an additional 6 authorities, less than 20% of these orders were granted on an indefinite basis. In 7 authorities, however, more than half the orders granted to the CSWO were granted on an indefinite basis.

In respect of private orders the variations were equally stark. In three authorities less than 10% of orders were granted on an indefinite basis; in another 3, less than 20%, yet in 8 local authority areas, indefinite orders were granted in 50% or more of all private applications.

It is difficult to determine why there should be such variations. They do not seem to correlate to population size or composition, nor do they correlate with the patterns of usage of orders by diagnosis or by per capita rates of the volume of orders. North Lanarkshire and South Lanarkshire have similar population sizes for those over 16, yet the indefinite orders granted to CSWOs in South Lanarkshire (15%) was nearly twice the percentage of indefinite orders granted in North Lanarkshire (8%). There was virtually no difference in the use of guardianship orders according to the diagnosis of individuals which caused the incapacity. The City of Edinburgh with an over 16 population of around 410,000 and the City of Glasgow with an over 16 population of just under 500,000 had wildly dramatic differences in the percentage of CSWO orders granted on an indefinite basis - 7% versus 64%.

In looking at local authority orders by diagnostic category we found that Glasgow has a higher proportion, 62% (26), granted for individuals with dementia than Edinburgh, 40% (12). In Glasgow, 85% (23) of indefinite orders were for individuals with dementia but there was only one indefinite order in respect of individuals with learning disability.

For private orders the figures are Glasgow, 46% (142) and Edinburgh, 45% (39). For Glasgow, 93% (112) of indefinite orders are in respect of adults with dementia. In Edinburgh, the number was 77% (17).

In Dundee City, with an over 16 population of just under 125,000, 61% of all orders where the CSWO was appointed guardian were granted on an indefinite basis. In Falkirk, with an over 16 population of just under 130,000, the percentage (26%) was much lower. And for orders granted to private individuals in these areas the difference was equally striking - 75% of all orders in Dundee City and 21% in Falkirk. In respect of CSWO guardianships there was little difference between the two in the use of orders in respect of individuals with a learning disability (47% Dundee and 43% Falkirk) but a greater use of orders for individuals with dementia in Falkirk (48%) as opposed to Dundee City (39%). Given the higher use of orders for people with dementia in Falkirk, you might have expected there to have been a higher rate

of orders granted on an indefinite basis than for those local authority guardianship orders in Dundee. The opposite was the case, however. Dumfries and Galloway with a similar over 16 population as Dundee City had only 7% of the orders to CSWOs granted on an indefinite basis and 3% of orders granted on an indefinite basis to private individuals.

Table 4.2 Duration of orders granted to local authorities 2013-14

| Local Authority | Duration of Orders in Years | | | | | Indefinite |
|-----------------------|-----------------------------|--------|--------|------------|-------|------------|
| | 0 to 3 | 4 to 5 | Over 5 | Indefinite | Total | |
| | No. | No. | No. | No. | No. | % |
| Aberdeen City | 0 | 6 | 1 | 8 | 15 | 53% |
| Aberdeenshire | 6 | 0 | 2 | 2 | 10 | 20% |
| Angus | 7 | 0 | 2 | 0 | 9 | 0% |
| Argyll and Bute | 6 | 2 | 0 | 0 | 8 | 0% |
| City of Edinburgh | 16 | 10 | 2 | 2 | 30 | 7% |
| Clackmannanshire | 1 | 1 | 0 | 0 | 2 | 0% |
| Dumfries and Galloway | 7 | 5 | 1 | 1 | 14 | 7% |
| Dundee City | 4 | 4 | 7 | 23 | 38 | 61% |
| East Ayrshire | 18 | 1 | 0 | 3 | 22 | 14% |
| East Dunbartonshire | 1 | 0 | 0 | 1 | 2 | 50% |
| East Lothian | 7 | 3 | 0 | 0 | 10 | 0% |
| East Renfrewshire | 3 | 0 | 0 | 0 | 3 | 0% |
| Eilean Siar | | | | | | |
| Falkirk | 13 | 4 | 0 | 6 | 23 | 26% |
| Fife | 21 | 17 | 7 | 12 | 57 | 21% |
| Glasgow City | 5 | 5 | 5 | 27 | 42 | 64% |
| Highland | 19 | 5 | 0 | 11 | 35 | 31% |
| Inverclyde | 3 | 0 | 0 | 0 | 3 | 0% |
| Midlothian | 4 | 1 | 0 | 0 | 5 | 0% |
| Moray | 0 | 0 | 0 | 3 | 3 | 100% |
| North Ayrshire | 9 | 4 | 0 | 1 | 14 | 7% |
| North Lanarkshire | 14 | 9 | 0 | 2 | 25 | 8% |
| Orkney | 1 | 0 | 0 | 1 | 2 | 50% |
| Perth and Kinross | 3 | 0 | 1 | 5 | 9 | 56% |
| Renfrewshire | 4 | 11 | 1 | 5 | 21 | 24% |
| Scottish Borders | 5 | 1 | 0 | 2 | 8 | 25% |
| Shetland | 0 | 0 | 0 | 1 | 1 | 100% |
| South Ayrshire | 4 | 2 | 0 | 1 | 7 | 14% |
| South Lanarkshire | 11 | 14 | 4 | 5 | 34 | 15% |
| Stirling | 4 | 7 | 0 | 2 | 13 | 15% |
| West Dunbartonshire | 1 | 3 | 4 | 1 | 9 | 11% |
| West Lothian | 3 | 2 | 7 | 1 | 13 | 8% |
| Grand Total | 200 | 117 | 44 | 126 | 487 | 26% |

Table 4.3 Duration of orders granted to private individuals 2013-14

| Private | Duration of Orders in Years | | | | | |
|-----------------------|-----------------------------|--------|--------|------------|-------|------------|
| | 0 to 3 | 4 to 5 | Over 5 | Indefinite | Total | Indefinite |
| | No. | No. | No. | No. | No. | % |
| Aberdeen City | 4 | 12 | 1 | 40 | 57 | 70% |
| Aberdeenshire | 11 | 18 | 7 | 29 | 65 | 45% |
| Angus | 6 | 4 | 7 | 6 | 23 | 26% |
| Argyll and Bute | 3 | 6 | 6 | 2 | 17 | 12% |
| City of Edinburgh | 6 | 30 | 28 | 22 | 86 | 26% |
| Clackmannanshire | 2 | 1 | 2 | 2 | 7 | 29% |
| Dumfries and Galloway | 14 | 15 | 2 | 1 | 32 | 3% |
| Dundee City | 1 | 2 | 11 | 42 | 56 | 75% |
| East Ayrshire | 4 | 9 | 1 | 12 | 26 | 46% |
| East Dunbartonshire | 0 | 15 | 9 | 10 | 34 | 29% |
| East Lothian | 11 | 7 | 3 | 0 | 21 | 0% |
| East Renfrewshire | 3 | 1 | 4 | 10 | 18 | 56% |
| Eilean Siar | 0 | 0 | 0 | 3 | 3 | 100% |
| Falkirk | 11 | 9 | 3 | 6 | 29 | 21% |
| Fife | 10 | 26 | 35 | 32 | 103 | 31% |
| Glasgow City | 16 | 139 | 35 | 120 | 310 | 39% |
| Highland | 17 | 10 | 12 | 38 | 77 | 49% |
| Inverclyde | 5 | 7 | 1 | 2 | 15 | 13% |
| Midlothian | 4 | 4 | 2 | 2 | 12 | 17% |
| Moray | 0 | 3 | 0 | 8 | 11 | 73% |
| North Ayrshire | 7 | 22 | 3 | 14 | 46 | 30% |
| North Lanarkshire | 54 | 57 | 12 | 15 | 138 | 11% |
| Orkney | 0 | 5 | 0 | 5 | 10 | 50% |
| Perth and Kinross | 9 | 7 | 30 | 16 | 62 | 26% |
| Renfrewshire | 14 | 16 | 10 | 28 | 68 | 41% |
| Scottish Borders | 6 | 5 | 1 | 10 | 22 | 45% |
| Shetland | 1 | 0 | 0 | 1 | 2 | 50% |
| South Ayrshire | 21 | 7 | 2 | 18 | 48 | 38% |
| South Lanarkshire | 9 | 52 | 18 | 28 | 107 | 26% |
| Stirling | 7 | 16 | 0 | 15 | 38 | 39% |
| West Dunbartonshire | 1 | 4 | 8 | 16 | 29 | 55% |
| West Lothian | 10 | 18 | 23 | 5 | 56 | 9% |
| Grand Total | 267 | 527 | 276 | 558 | 1628 | 34% |

Table 4.4 Duration of all orders granted 2013-214

| All | Duration of Orders in Years | | | | | |
|-----------------------|-----------------------------|--------|--------|------------|-------|------------|
| | 0 to 3 | 4 to 5 | Over 5 | Indefinite | Total | Indefinite |
| | No. | No. | No. | No. | No. | % |
| Aberdeen City | 4 | 18 | 2 | 48 | 72 | 67% |
| Aberdeenshire | 17 | 18 | 9 | 31 | 75 | 41% |
| Angus | 13 | 4 | 9 | 6 | 32 | 19% |
| Argyll and Bute | 9 | 8 | 6 | 2 | 25 | 8% |
| City of Edinburgh | 22 | 40 | 30 | 24 | 116 | 21% |
| Clackmannanshire | 3 | 2 | 2 | 2 | 9 | 22% |
| Dumfries and Galloway | 21 | 20 | 3 | 2 | 46 | 4% |
| Dundee City | 5 | 6 | 18 | 65 | 94 | 69% |
| East Ayrshire | 22 | 10 | 1 | 15 | 48 | 31% |
| East Dunbartonshire | 1 | 15 | 9 | 11 | 36 | 31% |
| East Lothian | 18 | 10 | 3 | 0 | 31 | 0% |
| East Renfrewshire | 6 | 1 | 4 | 10 | 21 | 48% |
| Eilean Siar | 0 | 0 | 0 | 3 | 3 | 100% |
| Falkirk | 24 | 13 | 3 | 12 | 52 | 23% |
| Fife | 31 | 43 | 42 | 44 | 160 | 28% |
| Glasgow City | 21 | 144 | 40 | 147 | 352 | 42% |
| Highland | 36 | 15 | 12 | 49 | 112 | 44% |
| Inverclyde | 8 | 7 | 1 | 2 | 18 | 11% |
| Midlothian | 8 | 5 | 2 | 2 | 17 | 12% |
| Moray | 0 | 3 | 0 | 11 | 14 | 79% |
| North Ayrshire | 16 | 26 | 3 | 15 | 60 | 25% |
| North Lanarkshire | 68 | 66 | 12 | 17 | 163 | 10% |
| Orkney | 1 | 5 | 0 | 6 | 12 | 50% |
| Perth and Kinross | 12 | 7 | 31 | 21 | 71 | 30% |
| Renfrewshire | 18 | 27 | 11 | 33 | 89 | 37% |
| Scottish Borders | 11 | 6 | 1 | 12 | 30 | 40% |
| Shetland | 1 | 0 | 0 | 2 | 3 | 67% |
| South Ayrshire | 25 | 9 | 2 | 19 | 55 | 35% |
| South Lanarkshire | 20 | 66 | 22 | 33 | 141 | 23% |
| Stirling | 11 | 23 | 0 | 17 | 51 | 33% |
| West Dunbartonshire | 2 | 7 | 12 | 17 | 38 | 45% |
| West Lothian | 13 | 20 | 30 | 6 | 69 | 9% |
| Grand Total | 467 | 644 | 320 | 684 | 2115 | 32% |

5. Our visits to adults on guardianship

During 2011/12 we introduced changes in our approach to our visiting and monitoring responsibilities regarding welfare guardianship. Prior to that we decided that because of the year on year increase in the number of welfare guardianship orders we had been spending an increasing amount of our time reviewing AWI forms and less time visiting people on guardianship. We audited our previous practice and decided it would be a much more productive use of staff time to visit samples of individuals on guardianship. We implemented a policy in which we seek to visit more people in categories where we had found, from past experience, a greater need to intervene (e.g. individuals with learning disability and/or autism spectrum disorder and those with Alcohol Related Brain Damage, for instance). Once we receive the court interlocutor relating to the welfare guardianship we write to all guardians and individuals on guardianship to advise them of our role. We make sure that they know they can contact us for advice and can also ask us to consider making a visit. As a result, by reducing our time closely reviewing guardianship paperwork for all orders, we were able to increase our visits to people on welfare guardianship by approximately 50%. In 2010/11 we undertook 379 visits to adults on guardianship. This increased in 2011/12 to 566 visits. In the 2012/13 we visited 560 adults on guardianship, and in 2013-14 we visited 593 individuals, a rise of 6% on last year or 56% from 2010-11. We also introduced a new system for recording much more detailed information regarding our visits, our observations and interventions.

Our capacity to visit was enhanced during the year as we had two secondees working with us during the year; one a local authority Mental Health Officer and the other, an NHS psychiatric nurse.

As we consciously set to increase visits to adults with Autism, Alcohol- Related Brain Damage, Acquired Brain Injury and Mental Illness we were anticipating that this would increase the number of cases requiring further follow-up work from Commission visitors.

| Primary diagnosis | | | Accommodation | | | | | |
|------------------------------|-----|-----|---------------|-------------|----------|-------------------|-------|-------|
| | No. | % | Care Home | Family Home | Hospital | Supported Tenancy | Other | Total |
| Learning Disability | 224 | 38% | 8% | 59% | 2% | 24% | 7% | 100% |
| Dementia | 141 | 24% | 80% | 11% | 6% | 2% | 1% | 100% |
| Autism Spectrum disorders | 80 | 13% | 13% | 63% | 3% | 19% | 4% | 100% |
| Alcohol Related Brain Damage | 62 | 10% | 77% | 13% | 3% | 6% | 0% | 100% |
| Acquired Brain Injury | 59 | 10% | 41% | 32% | 12% | 15% | 0% | 100% |

| | | | | | | | | |
|-------|-----|------|-----|-----|----|-----|----|------|
| Other | 7 | 1% | 86% | 14% | 0% | 0% | 0% | 100% |
| Total | 593 | 100% | 38% | 39% | 5% | 15% | 3% | 100% |

In 2013-14, of those adults on guardianship we visited, 38% (226) were resident in care homes, 39% (232) in the family home, 15% (86) were living in supported tenancies and 5% (30) were in hospital at the time of the visit.

Our visitors judged the accommodation to be of good or adequate standards in 97% (578) of the visits and the care and treatment was judged as being good or adequate for 98% (583) of those visited.

For those residents in care homes we found that 77% (173 of 226) had a life history available to staff. This was considerably lower than 82% observed in the previous year or the 98% observed in 2011-12.

We felt that there were 5% (46) adults where the guardianship was seen to be particularly well managed. This was a slight rise from the number last year, 7% (37) but still much lower than the 60 cases recorded in 2011-12. On the plus side, we only recorded 1% (5) cases as being poorly managed which was well below the 10 recorded in 2011/12.

We noted that the Principles of the AWI Act did not appear to be adhered to in 7% (40) cases which we followed up and will continue to monitor and, in some cases, will visit again. This was also an improvement from what we had observed the previous year when we followed up on 48 cases where we did not feel the Principles of the Act had been adhered to.

Where we noted concerns about any issue relating to the individual's care or the use of the legislation this always resulted in further discussion and correspondence with guardians, local authority supervisors and service providers.

Our concerns includes

- 23% (132) instances where carers had had no discussion with the welfare guardian about the potential need to delegate specific powers to the carers in certain situations.
- 112 guardians did not appear to have been consulted about the adult's medical treatment despite having the power to consent to medical treatment (Part 5 of the Act)
- 28% (119 of 422) private guardians appeared to have had no recent supervisory visits and for many of these (21%, 89) there was also no evidence that the adult had been visited by the local authority supervisor in the past six months.

- Concerns about the management of the adult's finances arose in 16 (down from 36) instances.
- 15 adults were subject to restraint or seclusion without proper authorisation in guardianship powers
- 2 adults had restrictions on who was allowed to visit without proper legal authorisation
- 13 adults had mobility problems which were not being adequately assessed or addressed

Concerns were noted on 148 (25%) of visits. In 83 of 148 cases, further ongoing casework was required by Commission visiting staff. We recorded 202 separate issues followed up as a result of these visits. These were classified as relating to:

Table 5.1 Issues followed up after guardianship visits

| Issue | Number of issues | % |
|------------------------|------------------|------|
| Communication | 9 | 4% |
| Legislation | 33 | 16% |
| Challenging Behaviour | 8 | 4% |
| Restrictions | 8 | 4% |
| Medication and consent | 34 | 17% |
| Activities | 41 | 20% |
| Finances | 16 | 8% |
| Placement | 36 | 18% |
| Environment | 15 | 7% |
| Other | 2 | 1% |
| Total No. Concerns | 202 | 100% |

6. Adults with Incapacity (Scotland) Act 2000, 2013-2014, Section 48 (regulated treatments) and Section 50 (disagreements with proxy).

Table 6.1 Section 48/50 requests and certificates issued by types of treatment

| Types of treatment | Section 48/50 Requests | Certificates Issued |
|---|------------------------|---------------------|
| | No. | No. |
| Medication to reduce sex drive | 21 | 20* |
| ECT | 26 | 25** |
| Treatment likely to lead to sterilisation | 1 | Approved*** |
| Termination of pregnancy z | 0 | 0 |
| Dispute (section 50) | 1 | 0* |
| TOTAL | 49 | 45 |

* two visits cancelled

** one certificate refused

*** Approved by doctor but a non-statutory form used (i.e. no certificate issued)

Our interest in this

The Commission has a responsibility under the Adults with Incapacity Act to provide second medical opinions (second opinion doctor) for treatments that are not covered by the general authority to treat (Section 47). These specific treatments regulated under section 48 are noted above. In addition, where there is a welfare proxy with the power to consent to medical treatment and there is disagreement between them and the treating doctor, the Commission can be requested to arrange a second opinion by an appropriate specialist to resolve the dispute (Section 50 Nominated practitioner).

What we found

The number of requests was similar to previous years. Of the 49 requests, two were cancelled before the visit took place. There were 47 actual second medical opinions carried out. One certificate for ECT was refused as the use of the 2003 Act was deemed more appropriate by the second opinion doctor. One patient had a surgical procedure approved for a serious physical health problem which was likely to lead to sterilisation as a complication. There were no section 50 assessments carried out this year as one was cancelled before it took place.



Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE
Tel: 0131 313 8777
Fax: 0131 313 8778
Service user and carer
freephone: 0800 389 6809
enquiries@mwscot.org.uk
www.mwscot.org.uk