

Annual monitoring report

**Key findings from our
monitoring of the
Adults with Incapacity
Act**

2011–12

Annual monitoring report - 2011-12
The Adults with Incapacity (Scotland) Act 2000

Table of Contents

<u>Our overview of the Use of the Adults with Incapacity (Scotland) Act 2000</u>	2
<u>Trends in the use of welfare guardianship</u>	3
<u>Geographical variations in the use of welfare guardianship</u>	4
<u>Primary causes of incapacity and duration of orders granted in local authority and private guardianship</u>	9
<u>Age and diagnosis of people placed on guardianship</u>	19
<u>Delay in processing guardianship applications (Local Authorities and Private Individuals)</u>	23
<u>Our visits to adults on guardianship</u>	28
<u>Adults with Incapacity (Scotland) Act 2000, 1st April 2011 to 31st March 2012, Section 48 (regulated treatments) and Section 50 (disagreements with proxy)</u>	31

Our 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 help ensure the Act is used in accordance with the Principles of the legislation.

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. Most orders were for people with dementia or learning disability. There were particularly large increases in East Lothian (76%) and Perth and Kinross (66%) council areas.
- The rise in new orders was mostly accounted for by private applications. Local authority applications also rose slightly by 5%. There are major implications for workload of mental health officer services.
- We were pleased to see that fewer of these orders were for indefinite periods. We have consistently raised the issue of indefinite welfare guardianship that may deprive people of their liberty. We consider that the lack of statutory review may be

incompatible with human rights legislation. As a result, Sheriffs are now less likely to grant welfare powers for indefinite periods.

- The use of indefinite orders remains higher for private applications than local authority applications. Solicitors and mental health officers should be aware of and give guidance to private applicants on the human rights implications of indefinite orders. We are continuing to work with Sheriffs and the Scottish Government on this. Local authorities with relatively high proportions of applications for indefinite orders should examine their practices.
- Courts dealt with over 80% of applications within two months. We hear concerns about the time it can take to appoint welfare guardians. We have no information that helps us determine the time between a decision to apply for guardianship and the submission of the application to court. We recommend local audits to find out if the process can be speeded up.
- When we visited individuals who were subject to guardianship, we were generally satisfied with their accommodation, care and treatment. The principles of the Act were usually applied well. Our most frequent concerns were the ways that guardians delegated their powers to day-to-day carers and the frequency of contact between local authority supervisors and private guardians.

For details of our investigations, advice and good practice activities this year see our Annual Report, 2011-2012.

Trends in the use of welfare guardianship

During the past year we have seen a 16% increase in the number of approved welfare guardianship applications. This is the highest percentage increase in the past five years. The number of applications put forward by local authorities had remained fairly static over the previous four-year period (417,435,423 and 427); however, this year they increased by 5%, up to 449. Overall, the increase in the use of welfare guardianship is the result, primarily, of the increase in private applications which have more than doubled in the last five years from 629 to 1317.

The Commission has been expressing concern about the high percentage of orders being granted on an indefinite basis. We are heartened to see that there appears to have been a change in practice over the past two years. In 2008/9 and 2009/10, 71% of welfare guardianship orders were granted on an indefinite basis. In 2010/11, this rate fell to 63%. This year we saw an even more dramatic fall, with only 45% of orders being granted on an indefinite basis. This is a decrease of 36 percentage points.

In 2009/10, 84% of orders granted for people with dementia were granted on an indefinite basis. This was down to 76% in 2010/11 and 64 % in 2011/12. For orders relating to adults with a learning disability, the rate during this period fell from 60% to 48%, and this year to 27%

As in previous years, private applications are much more likely to be sought and granted on an indefinite basis than local authority applications. This year 50% of private applications (down from 68% the previous year) and 31% of local authority applications (down from 51% the previous year) were granted on an indefinite basis. This is discussed in more detail below.

Geographical variations in the use of welfare guardianship

Guardianship orders granted by local authority area, 1 April 2011 to 31 March 2012

	Local authority guardianships granted 2011-12	Private guardianships granted 2011-12	All applications granted 2011-12	LA Rate Per 100k Over 16 Pop.	Private Rate Per 100k Over 16 Pop.	Total Rate Per 100k Over 16 Pop.	Recalled*	Lapsed Without Renewal*	Service User Died*
Aberdeen City	14	49	63	8	27	35	0	0	9
Aberdeenshire	24	63	87	12	32	44	0	0	8

Angus	11	26	37	12	29	41	0	0	9
Argyll and Bute	6	22	28	8	30	38	0	0	11
City of Edinburgh	20	67	87	5	16	21	0	0	16
Clackmannanshire	3	6	9	7	15	22	0	0	3
Dumfries and Galloway (LA)	17	24	41	14	20	34	1	6	15
Dundee City	27	44	71	23	37	60	0	0	11
East Ayrshire	16	24	40	16	25	41	1	3	3
East Dunbartonshire	4	26	30	5	31	36	0	0	5
East Lothian	15	22	37	19	28	48	1	3	4
East Renfrewshire	11	20	31	16	28	44	0	1	6
Eilean Siar	1	6	7	5	28	33	0	0	3
Falkirk	16	19	35	13	15	28	0	0	11
Fife (LA)	42	95	137	14	32	46	4	0	39
Glasgow City	48	265	313	10	54	64	0	6	76
Highland (LA)	37	61	98	21	34	54	0	0	27
Inverclyde	3	7	10	5	11	15	0	0	3
Midlothian	2	8	10	3	12	15	0	2	1

Moray	2	29	31	3	41	44	0	0	2
North Ayrshire	9	42	51	8	38	47	0	1	12
North Lanarkshire	27	82	109	10	32	42	0	9	22
Orkney (LA)		7	7	0	43	43	0	0	0
Perth and Kinross	19	49	68	16	40	56	1	0	17
Renfrewshire	8	30	38	6	22	28	0	3	3
Scottish Borders	9	13	22	10	14	24	0	1	2
Shetland (LA)	1	1	2	6	6	11	0	0	0
South Ayrshire	12	28	40	13	30	43	0	5	9
South Lanarkshire	25	94	119	10	37	47	0	3	42
Stirling	3	27	30	1	11	12	0	0	10
West Dunbartonshire	7	31	38	10	42	52	0	0	6
West Lothian	10	30	40	7	22	30	1	4	21
SCOTLAND	449	1317	1766	11	31	42	9	47	406

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. Anybody may apply to be a welfare guardian and 75% of applicants are now 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

The table above shows that the rate of approved orders per 100,000 population ranged from 11 in Shetland, 12 in Stirling and 15 in Inverclyde and Midlothian, to 64 in Glasgow, 60 in Dundee, 56 in Perth and Kinross and 54 in Highland. The Scottish average was 42 (31 private, 11 local authority)

While there was a 16% increase in approved applications across Scotland, there were considerable variations across the country. Six local authority areas saw increases in approved orders of 40% or greater. The number of approved applications in East Lothian increased by 76% in the past year. In Perth and Kinross, there was a 66% increase in welfare guardianship orders. In both cases this was as a result of private applications doubling over the previous year.

Approved orders fell by 20% in South Ayrshire and 19% in Falkirk, with the primary cause in South Ayrshire being a 52% reduction in local authority applications. It must be difficult for local authorities to plan Mental Health Officer services when they have to respond to such dramatic and unanticipated changes, usually increases, in the number of applications.

The variations in approved local authority applications (not counting those authorities with fewer than 10 approved applications) ranged from increases of 50% in North Lanarkshire, 48% in Highland and 40% in Fife, to decreases of 52% in South Ayrshire, 38% in Edinburgh, 30% in Glasgow and 26% in Angus.

The number of orders recalled by local authorities remained extremely low. Only nine orders were recalled this year; four of these by Fife.

Primary causes of incapacity and duration of orders granted in local authority and private guardianship

Welfare guardianships granted to Local Authorities between 1st April 2011 and 31st March 2012,
by primary cause of incapacity and duration.

Cause of incapacity	Acquired Brain Injury	Alcohol related brain disorder	Dementia /Alzheimer's	Learning Disability	Mental Illness	Other	Totals No.	%
Duration								
Up to and including 3 years	9	24	62	83	18	3	199	44%
Greater than 3 but including 5 years.	10	7	37	30	5	1	90	20%
Greater than 5 years.	0	0	12	6	1	0	19	4%
Indefinite	3	6	104	20	5	2	140	31%
Totals	22	37	215	139	29	6	448	
% of all orders	5%	8%	48%	31%	6%	1%		100%

*1 indefinite order granted: cause cited as inability to communicate due to physical incapacity

**Welfare guardianships granted to private applicants between 1st April 2011 and 31st March 2012,
by primary cause of incapacity and duration.%**

Cause of incapacity	Acquired Brain Injury	Alcohol related brain disorder	Dementia /Alzheimer's	Learning Disability	Mental Illness	Other	Totals N0.	%
Duration								
Up to and including 3 years	17	7	66	86	3	5	184	14%
Greater than 3 but including 5 years.	17	4	106	189	5	7	328	25%
Greater than 5 years.	8	0	43	85	1	3	140	11%
Indefinite	20	9	467	158	5	4	663	50%
Totals (% of all orders)	62	20	682 (518	14	19	1315	
% of all orders	5%	2%	52%	39%	1%	1%		100%

* Two 5 year orders granted: cause cited as inability to communicate due to physical incapacity

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 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 reassure us that the Act is being used appropriately and helps to highlight those individuals who might not be benefiting from the rights and protections that are set out in law. The tables above 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 the above tables relate to orders granted to local authority applicants. The second relates to private applicants.

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. Particularly concerning, as we have reported, is the seeking and granting of orders on an indefinite basis for young adults with learning disability. The Scottish Law Commission "Discussion Paper on Adults with Incapacity" published in August 2012 in considering possible changes to existing legislation maintains that, where powers authorise a deprivation of liberty, they should not be authorised for longer than a year.

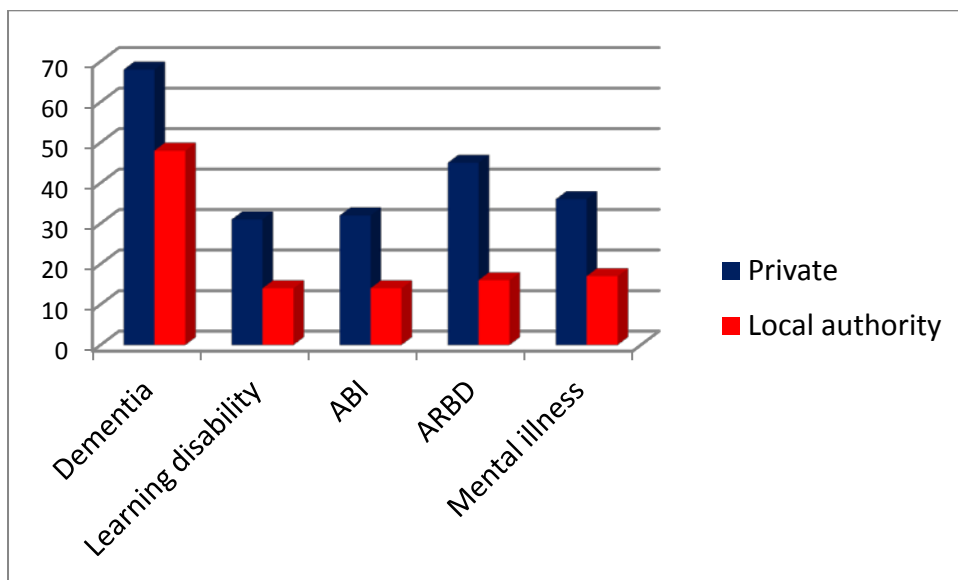
What we found

Four years ago we reported that 71% of all Welfare Guardianship orders were granted on an indefinite basis. In 2010/11 this fell to 63%. This year we saw a dramatic fall to 45% of all orders. This is a reduction of 37% in two years and we are pleased to see such a significant decrease in the use of indefinite orders. This is still, however, an area that needs a fundamental change in the law and continued monitoring in the interim.

Indefinite orders, in general, were much more likely to be granted where there was a private guardian. Fifty percent of all orders granted to private guardians were granted on an indefinite basis; for local authorities this stood at 31%. This difference was evident across all causes of incapacity except for mental illness. For those adults for whom a private guardian was appointed, 68% of

adults with dementia, 31% with learning disability, 32% with acquired brain injury (ABI), 45% with alcohol related brain damage (ARBD) and 36% with mental illness were placed on indefinite orders. This contrasted with the local authority percentages of 48%, 14%, 14%, 16% and 17%. What was most noticeable was the dramatic reduction in the granting of indefinite orders across all diagnostic categories other than mental illness.

Percentages of indefinite welfare guardianships by applicant and cause of incapacity, 1 April 2011 to 31 March 2012



**Duration of orders granted to Local Authorities,
1st April 2011 to 31st March 2012**

Duration of orders granted by Local Authority	Up to and including 3 years	Greater than 3 but including 5 years.	Greater than 5 years.	Indefinite	Total Orders	% of total orders granted which are indefinite
Aberdeen City	6	3	0	5	14	36
Aberdeenshire	15	3	0	6	24	25
Angus	6	0	1	4	11	36
Argyll and Bute	6	0	0	0	6	0
City of Edinburgh	12	4	1	3	20	15
Clackmannanshire	1	0	0	2	3	67
Dumfries and Galloway (LA)	11	4	0	2	17	12
Dundee City	1	1	2	23	27	85
East Ayrshire	14	1	0	1	16	6
East Dunbartonshire	1	2	0	1	4	25
East Lothian	10	2	0	3	15	20

East Renfrewshire	2	0	0	9	11	82
Eilean Siar	0	1	0	0	1	0
Falkirk	9	6	0	1	16	6
Fife (LA)	17	12	2	11	42	26
Glasgow City	12	18	2	16	48	33
Highland (LA)	15	6	3	13	37	35
Inverclyde	3	0	0	0	3	0
Midlothian	2	0	0	0	2	0
Moray	1	1	0	0	2	0
North Ayrshire	1	3	0	5	9	56
North Lanarkshire	21	4	0	2	27	7
Perth and Kinross	5	1	4	9	19	47
Renfrewshire	1	2	0	5	8	63
Scottish Borders	8	1	0	0	9	0
Shetland (LA)	1	0	0	0	1	0
South Ayrshire	8	2	0	2	12	17
South Lanarkshire	8	10	0	7	25	28
Stirling	1	0	0	2	3	67

West Dunbartonshire	0	2	0	5	7	71
West Lothian	2	0	4	4	10	40
SCOTLAND	200	89	19	141	449	31

**Duration of orders granted to private individuals,
1st April 2011 to 31st March 2012**

Duration of orders granted by Local Authority	Up to and including 3 years	Greater than 3 but including 5 years.	Greater than 5 years.	Indefinite	Total Orders	% of total orders granted which are indefinite
Aberdeen City	4	6	1	38	49	78
Aberdeenshire	1	11	1	50	63	79
Angus	1	1	4	20	26	77
Argyll and Bute	5	8	4	5	22	23
City of Edinburgh	14	15	6	32	67	48
Clackmannanshire	1	2	1	2	6	33
Dumfries and Galloway (LA)	7	8	4	5	24	21

Dundee City	0	1	3	40	44	91
East Ayrshire	10	6	1	7	24	29
East Dunbartonshire	0	13	3	10	26	38
East Lothian	3	11	4	4	22	18
East Renfrewshire	2	5	2	11	20	55
Eilean Siar	0	0	1	5	6	83
Falkirk	7	4	0	8	19	42
Fife (LA)	9	23	11	52	95	55
Glasgow City	13	105	31	116	265	44
Highland (LA)	4	4	15	38	61	62
Inverclyde	1	4	0	2	7	29
Midlothian	3	2	1	2	8	25
Moray	5	2	0	22	29	76
North Ayrshire	5	15	6	16	42	38
North Lanarkshire	41	10	4	27	82	33
Orkney (LA)	1	2	1	3	7	43
Perth and Kinross	5	7	9	28	49	57

Renfrewshire	2	8	2	18	30	60
Scottish Borders	3	0	1	9	13	69
Shetland (LA)	0	0	0	1	1	100
South Ayrshire	14	6	0	8	28	29
South Lanarkshire	11	31	15	37	94	39
Stirling	5	4	1	17	27	63
West Dunbartonshire	2	5	5	19	31	61
West Lothian	4	11	4	11	30	37
SCOTLAND	183	330	141	663	1317	50

Geographic variation in duration of orders

Our interest in these figures

We are keen to see that the Act operates in accordance with its principles - among these are that interventions are to be undertaken on a least restrictive basis and that they benefit the adult. We believe that the necessity of keeping an order in place should be subject to routine review to determine that the grounds for continuation of orders still apply. We publish these tables so that managers, solicitors and the court service can be made aware of the variations across the country and examine the relevance for their own practice.

What we found

As reported above, there is wide variance in the length of time for which orders are sought and granted. In looking at applications put forward by local authorities where the Chief Social Work Officer is appointed guardian, the rate of indefinite orders granted ranges from 0% to 85% with the average for local authority approved applications across Scotland at 31%, down from 51% the previous year. While the highest and lowest percentages are in areas where there are few local authority orders granted, for other areas the differences in the rates of indefinite orders sought are still significant. Dundee City and North Lanarkshire both had 27 orders granted where the Chief Social Work Officer was appointed guardian, yet in Dundee City, 85% of these orders were granted on an indefinite basis, while only 7% were indefinite in North Lanarkshire. The City of Edinburgh and Perth and Kinross Council had nearly the same number of orders where the Chief Social Work Officer was appointed guardian (20 and 19), yet in Perth and Kinross 47% of these were granted on an indefinite basis while in Edinburgh this was the case in only 15% of orders granted.

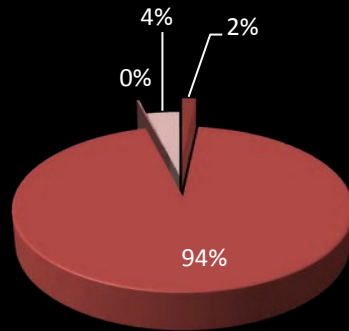
There was noticeable variation as well in the lengths of time for which orders were granted to private applicants in different local authority areas, although these differences were, generally, not as pronounced as with local authority applications. The average for orders granted to private persons on an indefinite basis was 50%, down from 68% the previous year..There was very wide variation, however, with, 91% in Dundee City, 79% in Aberdeenshire, 78% in Aberdeen, 77% in Angus and 76% of orders in Moray being granted on an indefinite basis. . At the other end of the scale, 18% of orders granted to private individuals in East Lothian, 21% of orders in Dumfries and Galloway, and 23% of orders in Argyll and Bute were granted on an indefinite basis.

There may well be reasonable explanations behind some of these variations. It may be that they can be explained in some instances by the age of the adults on whom orders are being sought. It is more understandable that indefinite orders are sought for an older person with moderate dementia than for a young person with mild to moderate learning disability. What is more concerning is the possibility that these variations may also be down to differences in the practice of solicitors, both private and local authority and, possibly, individual sheriff courts. The data needs closer examination of the circumstances of the individual cases to extract more useful information.

Age and diagnosis of people placed on guardianship

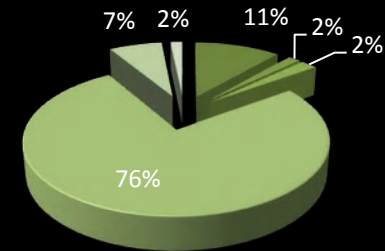
Primary cause of incapacity 16-24 Age Group

- Acquired Brain Injury
- Learning Disability
- Mental Illness
- Other



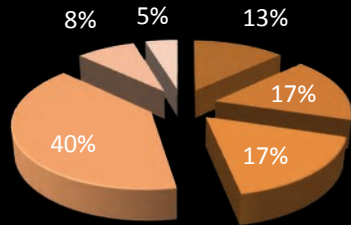
Primary cause of incapacity 25-44 Age Group

- Acquired Brain Injury
- Alcohol Related Brain Disorder
- Dementia/ Alzheimer's Disease
- Learning Disability
- Mental Illness
- Other



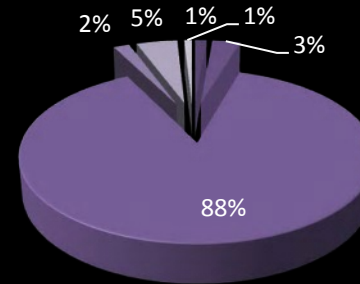
Primary cause of incapacity 45-64 Age Group

- Acquired Brain Injury
- Alcohol Related Brain Disorder
- Dementia/ Alzheimer's Disease
- Learning Disability
- Mental Illness
- Other



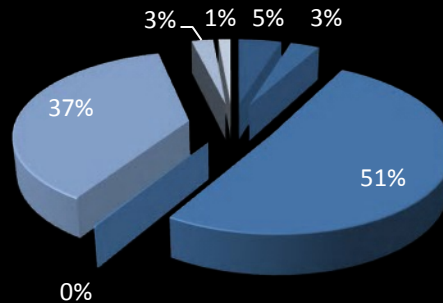
Primary cause of incapacity Over 65s

- Acquired Brain Injury
- Alcohol Related Brain Disorder
- Dementia/ Alzheimer's Disease
- Learning Disability
- Mental Illness
- Other



Primary cause of incapacity All Age Groups

- Acquired Brain Injury
- Alcohol Related Brain Disorder
- Dementia/ Alzheimer's Disease
- Inability to communicate
- Learning Disability
- Mental Illness
- Other



Our interest in these figures

The above pie 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. While some of this will be of no surprise it has to 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 2011/12 this decreased from 55% in the previous year to 51% of all welfare orders granted. There was, conversely, an increase in the granting of orders for adults where the cause of incapacity was learning disability, up from 32% the previous year to 37% this past year. There were differences 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. Private guardians were more often appointed for people with dementia and learning disability than was the case where the Chief Social Work Officer was appointed guardian. Chief Social Work Officers were much more likely to be appointed as guardians than private individuals when alcohol related brain damage or mental illness was the cause of incapacity.

When looking at the cause of incapacity for all welfare guardianships in existence, we found a narrowing of the gap between learning disability (38%) and dementia (47%). We would expect this narrowing of the gap to continue as the use of guardianship for people with learning disability is growing at a greater rate than that for people with dementia and nearly half of orders granted for people with learning disability are for those under 25 years of age.

In the past year 49% of all orders granted on adults with a learning disability were for those under 25 years of age. While this is down from 53% in 2010/11, in the two years previously, this stood at about 43% of all those with learning disability placed on orders. For people with dementia, the percentage of orders granted where the adult was over 65 remained at the same level as last year at 95%.

In the 25-44 age group, learning disability was the cause of incapacity in 76% of orders granted, with adults with acquired brain injury and alcohol-related brain damage accounting for 13% of orders granted. In the 45-64 age group, learning disability was the cause of incapacity in 40% of orders, with alcohol related brain damage and acquired brain damage combined accounting for 30% of the orders granted.

Delay in processing guardianship applications (Local Authorities and Private Individuals)

Delay between application and interlocutor, in months, for guardianships granted to Local Authorities,
1st April 2011 to 31st March 2012

	Number of orders granted within 2 months	% of orders granted in less than 2 months	Number of orders granted after 2 but before 6 months	% of orders granted after 2 but before 6 months	Number of orders granted after 6 months	% of orders granted after 6 months	Totals number of orders granted
Aberdeen City	12	86	1	7	1	7	14
Aberdeenshire	15	63	5	21	4	17	24
Angus	10	91	1	9	0	0	11
Argyll and Bute	5	83	1	17	0	0	6
City of Edinburgh	14	70	4	20	2	10	20
Clackmannanshire	3	100	0	0	0	0	3
Dumfries and Galloway (LA)	12	71	4	24	1	6	17
Dundee City	26	96	1	4	0	0	27
East Ayrshire	9	56	5	31	2	13	16
East Dunbartonshire	1	25	3	75	0	0	4

East Lothian	13	87	0	0	2	13	15
East Renfrewshire	9	82	2	18	0	0	11
Eilean Siar	0	0	0	0	1	100	1
Falkirk	11	69	3	19	2	13	16
Fife (LA)	30	71	10	24	2	5	42
Glasgow City	31	65	16	33	1	2	48
Highland (LA)	30	81	7	19	0	0	37
Inverclyde	2	67	0	0	1	33	3
Midlothian	2	100	0	0	0	0	2
Moray	2	100	0	0	0	0	2
North Ayrshire	7	78	1	11	1	11	9
North Lanarkshire	20	74	5	19	2	7	27
Perth and Kinross	14	74	5	26	0	0	19
Renfrewshire	7	88	1	13	0	0	8
Scottish Borders	7	78	2	22	0	0	9
Shetland (LA)	1	100	0	0	0	0	1
South Ayrshire	11	92	1	8	0	0	12
South Lanarkshire	20	80	4	16	1	4	25
Stirling	1	33	2	67	0	0	3

West Dunbartonshire	5	71	1	14	1	14	7
West Lothian	7	70	1	10	2	20	10
Scotland	337	75	86	19	26	6	449

**Delay between application and interlocutor, in months, for guardianships granted to private applicants,
1st April 2011 to 31st March 2012**

	Number of orders granted within 2 months	% of orders granted in less than 2 months	Number of orders granted after 2 but before 6 months	% of orders granted after 2 but before 6 months	Number of orders granted after 6 months	% of orders granted after 6 months	Totals number of orders granted
Aberdeen City	42	86	5	10	2	4	49
Aberdeenshire	60	95	3	5	0	0	63
Angus	24	92	2	8	0	0	26
Argyll and Bute	22	100	0	0	0	0	22
City of Edinburgh	58	87	8	12	1	1	67
Clackmannanshire	5	83	1	17	0	0	6
Dumfries and Galloway (LA)	22	92	2	8	0	0	24
Dundee City	40	91	4	9	0	0	44

East Ayrshire	21	88	2	8	1	4	24
East Dunbartonshire	21	81	5	19	0	0	26
East Lothian	19	86	3	14	0	0	22
East Renfrewshire	17	85	3	15	0	0	20
Eilean Siar	5	83	1	17	0	0	6
Falkirk	18	95	1	5	0	0	19
Fife (LA)	80	84	14	15	1	1	95
Glasgow City	160	60	101	38	4	2	265
Highland (LA)	57	93	3	5	1	2	61
Inverclyde	7	100	0	0	0	0	7
Midlothian	8	100	0	0	0	0	8
Moray	24	83	3	10	2	7	29
North Ayrshire	39	93	2	5	1	2	42
North Lanarkshire	76	93	6	7	0	0	82
Orkney (LA)	5	71	2	29	0	0	7
Perth and Kinross	42	86	6	12	1	2	49
Renfrewshire	27	90	3	10	0	0	30
Scottish Borders	11	85	2	15	0	0	13

Shetland (LA)	1	100	0	0	0	0	1
South Ayrshire	20	71	7	25	1	4	28
South Lanarkshire	83	88	10	11	1	1	94
Stirling	25	93	2	7	0	0	27
West Dunbartonshire	25	81	6	19	0	0	31
West Lothian	20	67	9	30	1	3	30
SCOTLAND	1084	82	216	16	17	1	1317

Delays in processing guardianship applications

Our interest in these figures

Concerns about the length of time it takes to process guardianship applications arise each year. There are any number of factors that may account for delays and it is hard to draw any firm conclusions from this data. It may be, for instance, that the type of cases that will be contested are more likely to be brought to court with the local authority as applicant. Delays can, in some instances however, stop an individual from moving from hospital to a care home and may affect the choice of care home as well, when initial choices are no longer available after delays.

There will be other reasons for delays that may take place before an application reaches court. We do not have data to examine these delays but the processes involved in putting forward applications and the required reports are something which should be examined in each local authority area to insure that these processes are as efficient as possible to avoid unnecessary delay which may affect the welfare of the adults involved.

What we found

Last year was the first time we had monitored the time taken to process guardianship applications once submitted to court. In the year since then, we have seen significant improvements in the time taken by courts in processing applications. The data shows that the great majority of cases, both for private as well as local authority applications, are dealt with relatively quickly - in under 2 months. Courts dealt with 80% of all applications within two months of submission, an increase from 71% in 2010-11. Courts approved 98% of all applications within six months of submission, There was not a great deal of discrepancy between the processing times of local authority as opposed to private applications. There are, however, some interesting differences between different local authority areas both for private as well as local authority applications. Individual local authorities and courts may wish to reflect on this data to see whether applications can be handled more efficiently in some cases. We also recommend examining the time period between the decision being taken privately or by local authorities that an application for welfare guardianship should be made and the order finally being submitted to the sheriff court. This is not something that can be done by the Commission but could usefully be looked at on a local basis.

Our visits to adults on guardianship

During 2011/12 we introduced changes in our approach to our visiting and monitoring responsibilities regarding welfare guardianship. 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 to visit samples of individuals. We visited more people in categories where we had found a greater need to intervene in the past (e.g. individuals with learning disability and/or autistic spectrum disorder). We wrote to all guardians and individuals on guardianship to advise them of our role. We made sure that they knew they could contact us for advice and ask us to visit. As a result, we increased our visits to people on welfare guardianship by 49% in the past year, up from 379 visits in 2010/11, to 566 visits in 2011/12. We also introduced a new system for recording much more detailed information regarding our visits, our observations and interventions.

The adults we visited had incapacity caused by the following :

- Learning Disability: 35%
- Dementia: 29%
- Autism Spectrum disorders: 15%
- Alcohol Related Brain Damage: 9%
- Acquired Brain Injury: 8%
- Mental illness: 2%
- Other 2%

Of those adults on guardianship we visited, 42% were resident in care homes, 35% in the family home, 17% were living in supported tenancies and 4% were in hospital at the time of the visit. Our visitors judged the accommodation to be of a good or adequate standards in 98% of the visits and the care and treatment was judged as being good or adequate for 99% of those visited. For those residents in care homes we found that 98% had a life history available to staff. We felt that there were 60 adults where the guardianship was seen to be particularly well managed, with only 10 cases being seen to be poorly managed. We noted concerns that the Principles of the AWI Act did not appear to be adhered to in 48 cases which we followed up and will continue to monitor and, in some cases, will visit again.

Our concerns includes

- 137 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.
- We also noted that in 21% of our visits to adults for whom there was a private guardian there was no evidence that the adult had been visited by the local authority supervisor in the previous six months and no evidence that the private guardian had been seen by the local authority supervisor as required in the previous six months in 31% of these cases.

- Our visitors were of the view that the grounds for guardianship continued to be met in all but five cases. Concerns about the management of the adult's finances arose in 24 instances. Where others were managing the adult's finances on their behalf we found little evidence that creative thought had gone into how the adult could benefit from his or her money.
- 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. Over 20% of the 566 adults visited involved follow-on work by the Commission to resolve issues which had arisen during these visits. We recorded 289 separate issues followed up as a result of these visits. These were classified as relating to:
 - Legislation: 23%
 - Medication and consent: 21%
 - Placement: 15%
 - Activities: 11%
 - Finances: 8%
 - Behaviour which was difficult to manage: 7%
 - Restrictions: 5%
 - Communication: 4%
 - Mobility: 1%

Adults with Incapacity (Scotland) Act 2000, 1st April 2011 to 31st March 2012, Section 48 (regulated treatments) and Section 50 (disagreements with proxy).

Requests	Section 48/50 Requests	Certificates Issued
Types of treatment		
Medication to reduce sex drive	26	22
ECT	29	25
Treatment likely to lead to sterilisation	1	1
Dispute	1	0
TOTAL	57	48

Our interest in this

The Commission has a responsibility under the Adults with Incapacity Act to provide second medical opinions (nominated medical practitioners) for treatments that are not covered by the general authority to treat (Section 47). The specific treatments 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 provide a second opinion to resolve the dispute.

What we found

The number of requests has increased slightly this year, which may in part be due to the Commission's specific monitoring of Part 5 of AWI. Out of the 57 requests, three were cancelled before the visit took place leaving 54 actual second medical opinions carried out. Certificates were refused in two cases for medication to reduce sex drive, and three for ECT (where the use of the 2003 Act was deemed more appropriate by the second opinion doctor).

The Section 50 request was in respect of a dispute between a care home and a welfare guardian with regard to the necessity of an x-ray following a fall at the home. The guardian felt that it would be too distressing for the individual concerned. Taking all the views into account and the presenting clinical picture as well as the past and present wishes of the individual, the second opinion doctor declined to issue a certificate. However, the case has raised a number of concerns regarding the clarity and scope of Part 5 in respect of "medical treatment" and we will be discussing this further with the Scottish Government.