mentalwelfare commission for scotland

dignity & rights ethical tre respect ca & equality

STATISTICAL MONITORING

AWI Act Monitoring 2015/16

SEPTEMBER 2016

Contents

1. What we do

We protect and promote the human rights of people with mental health problems, learning disabilities, dementia and related conditions.

We do this by

- Checking if individual care and treatment is lawful and in line with good practice.
- Empowering individuals and their carers through advice, guidance and information.
- Promoting best practice in applying mental health and incapacity law.
- Influencing legislation, policy and service development.

Welfare Guardianship

The Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) introduced a system for safeguarding the welfare and managing the finances and property of adults who lack capacity to act or make some or all decisions for themselves, because of mental illness, learning disability, dementia or other condition (or inability to communicate due to a physical condition). It allows other people, called guardians or attorneys, to make decisions on behalf of these adults, subject to safeguards.

When an adult has capacity, they can grant a power of attorney to act on their behalf, should they become unable to make their own decisions.

When an adult no longer has capacity, an application is made to court, and the sheriff may appoint a welfare guardian as a proxy decision maker. The welfare guardian is then involved in making key decisions concerning the adult's personal and medical care.

The majority of guardians are private individuals, usually a relative, carer or friend. These are known as private guardians. The court can also appoint the chief social work officer (CSWO) of a local authority to be the person's welfare guardian, especially if private individuals do not wish to take on the role of guardian. This is known as local authority guardianship.

Local authorities have a duty to make an application for welfare guardianship where it is required and no-one else is applying.

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

The Mental Welfare Commission for Scotland (the Commission) has safeguarding duties in relation to people who fall under the protection of the 2000 Act. 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 helps us to inform policy and practice. It also assists local area management in reviewing how and for whom Part 6 of the 2000 Act is being used in their area.

2. An overview of the use of the Adults with Incapacity (Scotland) Act 2000

The Mental Welfare Commission for Scotland is part of the framework of legal safeguards in place to protect the rights of people on welfare guardianship, intervention orders, and powers of attorney. We monitor the use of the welfare provisions of the Adults with Incapacity (Scotland) Act 2000. We also monitor the use of Part 5 of the 2000 Act relating to consent to medical treatment and research.

The Commission receives a copy of every application for welfare guardianship, including the powers sought, medical and mental health officer (MHO) assessments, and a copy of the order granted by the sheriff. We visit some people on guardianship, and provide advice and good practice guidance on the operation of the 2000 Act. We investigate circumstances where an adult with incapacity may be at risk. In doing so we might also involve local authority colleagues.

Where we think an adult might require adult support and protection procedures we refer to the local authority, whose duty it is to investigate such matters under the Adult Support & Protection (Scotland) Act 2007.

Our main findings from our monitoring activities are:

- The number of existing guardianship orders (10,735) has risen by 15% since 2014/15 (9,333).
- The number of new welfare guardianship applications granted continues to rise. In 2015/16 there were 2,657 applications granted across Scotland (2,359 new orders and 298 renewals). This represents an 8% increase this year and a 99% increase since 2009/10.
- Private applications accounted for 74% of all applications in 2015/16. This year, total private applications have increased by 5% to 1,979, following last year's increase of 15%, and representing a 117% increase since 2009/10. As in last year's report, we would highlight that this places local authorities under increased pressure to fulfil their statutory duties to provide reports for applicants. Local authorities have no control over this demand-led system.
- Local authority applications accounted for 26% of all applications. These also increased by 17% to 678, an overall 60% increase since 2009/10.
- The Scotland rate for approved welfare guardianship applications has increased again this year from 55 to 60 per 100,000 in the over 16 age group population. The highest rates are in South Ayrshire (104 per 100K), Renfrewshire (97 per 100K), and East Ayrshire (98 per 100K). Rates increased most in Dumfries and Galloway (93 per 100K, +89%), and Clackmannanshire (76 per 100K, +68%).

- Almost a fifth (19%, 506) of the welfare guardianships granted this year are from the 16-24 age group for learning disability. We assume that these figures are largely related to the continued uptake of Self Directed Support.
- Although the number of indefinite guardianship orders has decreased, there are 4,800 indefinite orders as of 31 March 2016, which represents 45% of the total extant orders (10,735). We suggest that orders should be granted on a time-limited basis, especially for young people where circumstances may change over a few years, or for adults who may regain some areas of capacity e.g. alcohol related brain injury. Where an order is indefinite, we strongly recommend particular attention is paid to periodic reviews. This ensures that the adult still lacks capacity across the range of authorised powers, that the measures remain necessary and that their use is meeting the adult's needs. Such reviews are in-keeping with both the principles of the legislation and the Code of Practice.

Our visits to adults on welfare guardianship

In 2015/16, we visited 472 adults on welfare guardianship. We continued to target our guardianship visits more towards individuals where issues arose in relation to restraint, deprivation of liberty or seclusion.

In 2015/16, of those adults on guardianship we visited, 42% (198) were resident in care homes and 32% (153) in the family home. We saw a larger proportion in supported tenancies this year (21%, 100) and 3% (13) were in hospital at the time of the visit.

We found that in almost all cases (93%, 437) both care and treatment and accommodation were judged as being good or adequate.

Concerns were noted on 27% (128) of visits. In over half of these cases (60%, 77 of 128) further ongoing casework was required by Commission visiting staff. We recorded 173 separate issues followed up as a result of these visits. Our main concerns were:

- 20% (40) of individuals in care homes did not have a life history available to staff.
- In 6% (26) of cases, the principles of the 2000 Act did not appear to be being adhered to; we followed these up and will continue to monitor and, in some cases, will visit again.
- In 10% (47) of all cases, there was no clear evidence that the guardian had visited the adult in the last 6 months.
- 41% (130 of 319) of private guardians appeared to have had no recent supervisory visits, and for many of these (64%, 83 of 130) there was no evidence that the adult had been visited by the local authority supervisor in the past six months. Supervisory visits by social work departments support guardians to properly use their powers in line with the principles of the 2000 Act.

- For 5% (23) of individuals, issues relating to Section 47 and medication were a cause for concern requiring follow up; in other cases we provided advice to care staff concerning GP responsibilities for completing or updating a S47 form and directed them to the treatment plan template.

For 5% (22) of individuals, there were concerns about the appropriateness of the current placement. For a further 3% (15), some reservations had been expressed by the individual themselves, professional staff or the Commission visitor. Issues included inappropriate accommodation and lack of support for individuals with mobility problems, and being accommodated with a much older age group. We discussed this with the individual and care managers, and followed up with reviewing teams where appropriate. We requested and received follow-up reports.

Survey of private guardians 2016

This year we conducted a survey of 286 private welfare guardians who had been acting for three years following their appointment in 2013. We received 90 responses. One of the questions we asked was: "How did they find out about welfare guardianship?" We found that 46% had been told by social workers, 30% by a solicitor, and 12% by a relative/friend. Healthcare professionals were rarely mentioned, and may need to be made more aware of the Adults with Incapacity Act and the importance of sharing information about guardianship with relatives.

Of the responses from private guardians, 68% told us they found being welfare guardians helpful, while 28% said it had not made much difference. It was positive to learn that 92% of guardians would advise others in the same situation to apply for welfare guardianship.

3. Geographic variations in the use of welfare guardianship

Our interest in this

Over the years, we have reported the variations in the use of guardianship from one local authority area to another, and from one year to the next. 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 that may have implications for workload management and planning.

What we found

In 2015/16, there were 2,657 applications granted across Scotland - a further increase of 8% for welfare guardianships granted. This represents a 99% increase since 2009/10.

While there was just over an 8% increase in applications granted across Scotland, there were considerable variations across the country. Two mainland local authority areas saw increases in approved orders of 50% or greater: Clackmannanshire 68% and Dumfries and Galloway 89%. Authorities have attributed the rise to an aging population and increasing numbers of young people moving into adult services who request Self Directed Support.

Nine local authorities showed some reduction in applications: Dundee City -20%, East Dunbartonshire -2%, Glasgow City -1%, Inverclyde -3%, North Ayrshire -14%, Scottish Borders -5%, South Lanarkshire-17%, Stirling-2%, and West Lothian -14%.

The rate of approved orders for 2015/16 per 100,000 population over 16 is shown in Table 3.1. The Scotland rate was 59.6 (44.4 private and 15.2 local authority) an increase from 55 (42 private and 13 local authority) in 2014/15. South Ayrshire (104), East Ayrshire (98) and Renfrewshire (97) as last year and Dumfries and Galloway (93) this year, had the highest per capita rates.

Table 3.1 Guardianship orders by local authority area 2015/16

		Guardianships granted 2015 - 2016								
		Local Authority	Private	All	Local Authority	Private	All	Local Authority	Private	All
Local authority	Population 16+**	Number	Number	Number	Rate per 100K Population*		16+	% change in Rate per 100K 16+ Population (2015-16)		
Aberdeen City	196,499	26	51	77	13	26	39	-1	8	7
Aberdeenshire	213,104	21	59	80	10	28	38	-2	2	0
Angus	97,247	15	32	47	15	33	48	2	2	4
Argyll and Bute	73,598	19	23	42	26	31	57	16	-4	13
City of Edinburgh	422,702	49	93	142	12	22	34	5	3	8
Clackmannanshire	42,331	5	27	32	12	64	76	0	31	30
Dumfries and Galloway	125,994	47	70	117	37	56	93	21	23	44
Dundee City	124,412	20	50	70	16	40	56	-6	-14	-20
East Ayrshire	100,869	24	75	99	24	74	98	-2	22	20
East Dunbartonshire	88,416	3	36	39	3	41	44	-2	0	-2
East Lothian	84,135	16	30	46	19	36	55	-3	12	9
East Renfrewshire	74,559	9	28	37	12	38	50	3	3	5
Eilean Siar	22,722	5	12	17	22	53	75	18	35	53
Falkirk	130,142	25	66	91	19	51	70	-8	15	7
Fife	303,999	66	143	209	22	47	69	6	4	10
Glasgow City	508,808	52	319	371	10	63	73	2	-3	-1

		Guardianships granted 2015 - 2016								
		Local Authority	Private	All	Local Authority	Private	All	Local Authority	Private	All
Local authority	Population 16+**	Number			Rate per 100K Population*		16+	% change in Rate per 100K 16+ Population (2015-16)		
Highland	194,154	42	96	138	22	49	71	-4	8	4
Inverclyde	66,534	9	9	18	14	14	27	5	-7	-3
Midlothian	70,766	11	19	30	16	27	42	11	-3	8
Moray	79,008	13	30	43	16	38	54	7	5	12
North Ayrshire	112,934	7	58	65	6	51	58	-11	-3	-14
North Lanarkshire	275,129	39	145	184	14	53	67	2	2	4
Orkney	18,181	4	14	18	22	77	99	16	38	55
Perth and Kinross	125,311	16	49	65	13	39	52	0	-1	-1
Renfrewshire	144,729	37	104	141	26	72	97	10	10	20
Scottish Borders	95,055	14	25	39	15	26	41	4	-10	-5
Shetland	18,946	1	5	6	5	26	32	5	5	11
South Ayrshire	94,602	22	76	98	23	80	104	5	11	16
South Lanarkshire	261,203	36	131	167	14	50	64	0	-17	-17
Stirling	77,320	5	28	33	6	36	43	-4	2	-2
West Dunbartonshire	73,881	11	45	56	15	61	76	4	6	10
West Lothian	143,448	9	31	40	6	22	28	-1	-14	-14
SCOTLAND	**4,460,738**	**678**	**1979**	**2657**	**15**	**44**	**60**	**2**	**2**	**4**

*All figures rounded to nearest whole unit
**National Records of Scotland. All Tables: Mid-2015 Population Estimates Scotland (16+ population)
http://www.nrscotland.gov.uk/files//statistics/population-estimates/mid-15-cor-12-13-14/15mype-cahb-all-tab.xlsx (accessed 15/07/2016)

Figure 3.1 All guardianship applications over the last seven years – by local authority and private applications (Number)

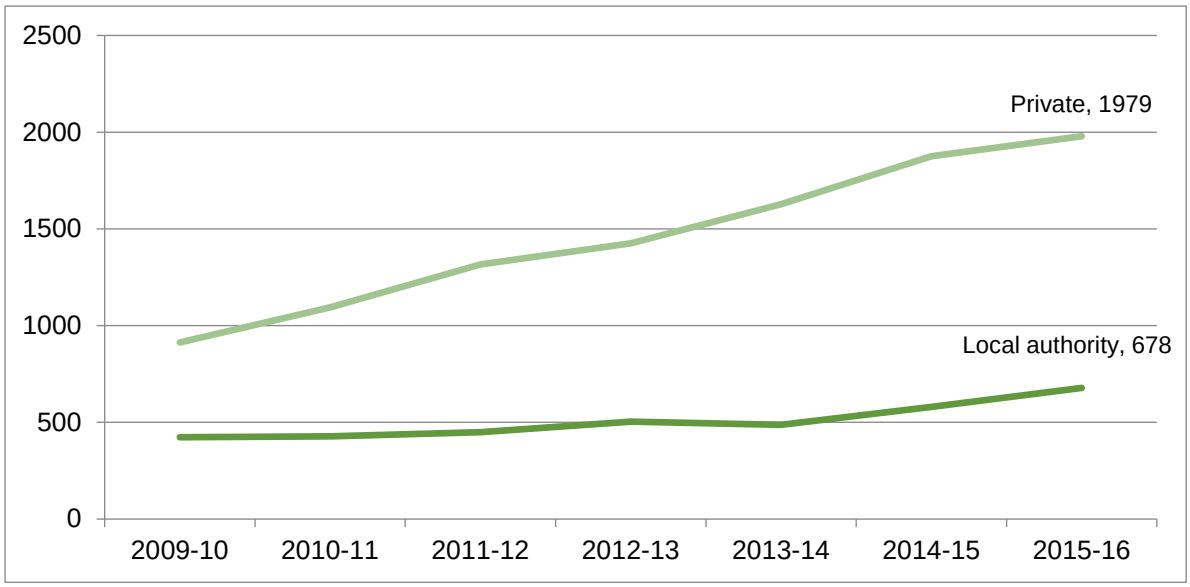
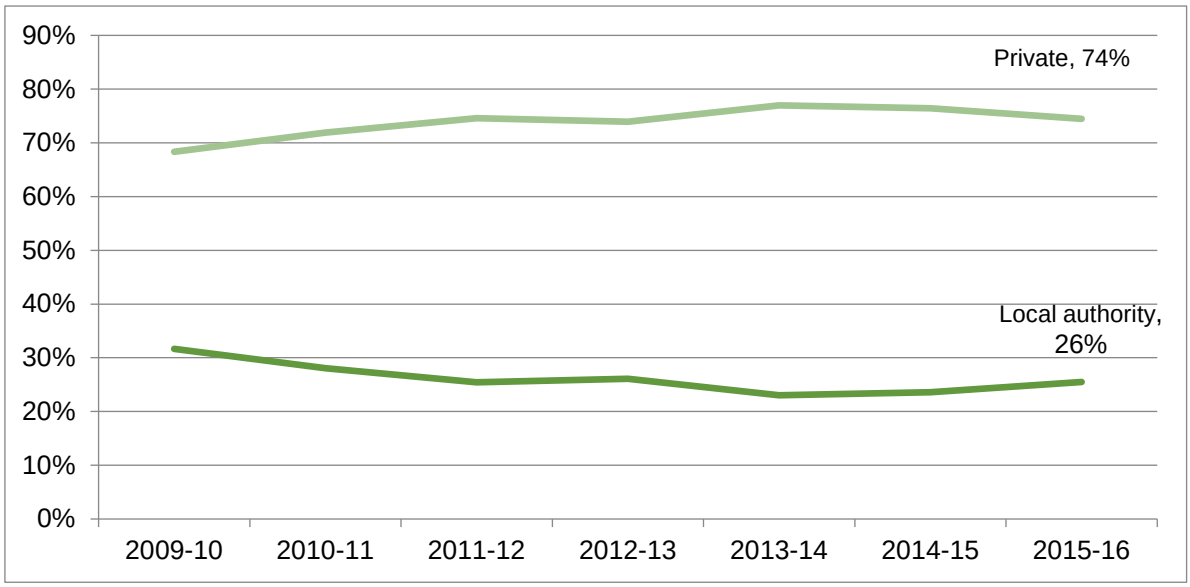


Figure 3.2 All guardianship applications over the last seven years – by local authority and private applications (%)



Private applications accounted for 74% of all applications. This year, total private applications have increased by 5% to 1979, following last year's increase of 15% and representing a 117% increase since 2009/10. Twenty two local authorities showed an increase, five by 50% or more. However, ten local authorities showed a decrease in private applications. This highlights the difficulties for local authorities, as their statutory duties under the 2000 Act are largely in response to a demand led system over which they have no control.

Local authority applications accounted for 26% of all applications. These also increased by 17% to 678, an overall 60% increase since 2009/10. Nineteen authorities showed increases, nine with increases of 50% or more.

The Act requires local authorities to be the default applicant, when appropriate, where there is no private individual applicant available. Concerns have been reported that local authorities may be reluctant to do this, and instead encourage families to take the responsibility via a private application. In many cases this is appropriate, but authorities should not seek to pressure family members to act if they are unwilling or may find it difficult to fulfil the responsibilities of a guardian.

4. Age and diagnosis of people placed on guardianship

Figure 4.1 All welfare guardianships 2015/16 by primary diagnosis (%)

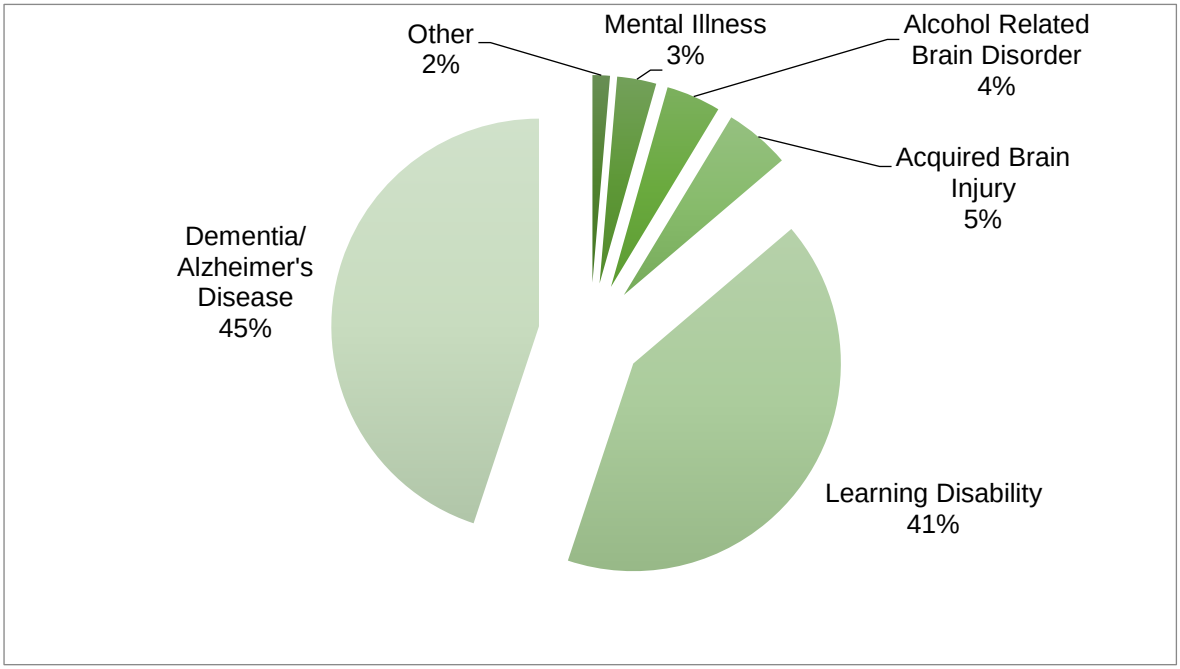
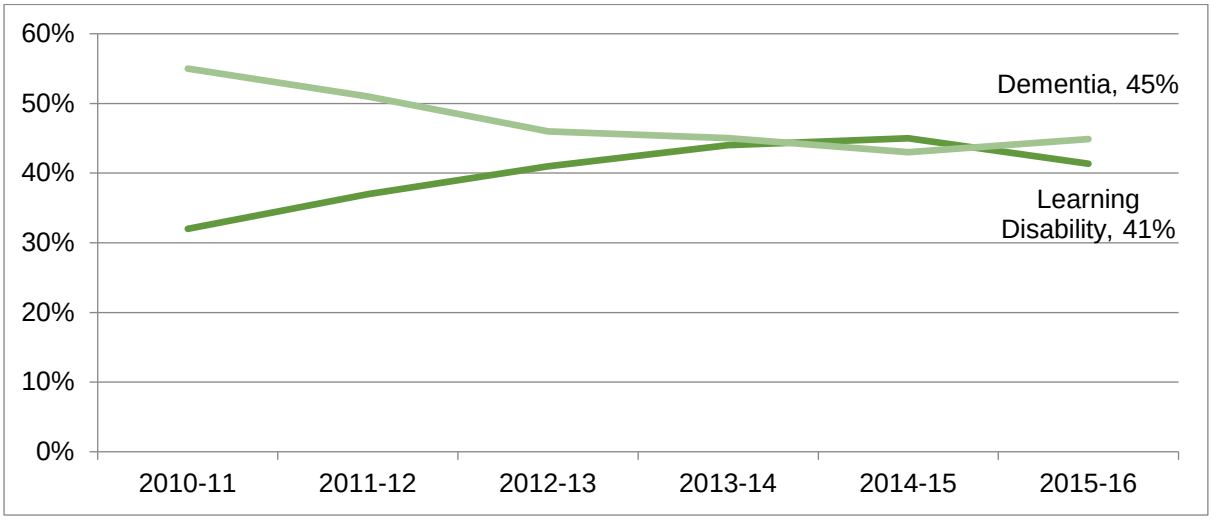


Figure 4.2 All guardianship applications over the last six years – individuals with dementia or learning disabilities (%)



The proportion of guardianship applications for people with a learning disability rose to a high of 45% (1,104) in 2014/15. This year the proportion is lower (41%), although the number has increased to 1,098. The proportion for people with dementia has returned to its 2013/14 level (45%) and the number has increased to 1,193.

Table 4.1 All welfare guardianships 2015/16 by primary diagnosis and age group

Primary Diagnosis	2014-15		Age Group 2015-16									
	Total		16-24		25-44		45-64		65+		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Dementia	1056	43	2	0%	4	1%	59	13%	1128	86%	1193	45%
Learning Disability	1104	45	506	96%	314	88%	232	51%	46	3%	1098	41%
Acquired Brain Injury	122	5	11	2%	23	6%	57	12%	45	3%	136	5%
Alcohol Related Brain Disorder	92	4	0	0%	3	1%	61	13%	49	4%	113	4%
Mental Illness	69	3	3	1%	7	2%	36	8%	35	3%	81	3%
Other	12	0	4	1%	5	1%	12	3%	15	1%	36	1%
Total	**2455**	**100**	**526**	**100%**	**356**	**100%**	**457**	**100%**	**1318**	**100%**	**2657**	**100%**

The above table shows the age at which adults with different causes of impaired capacity have welfare guardianship applications approved under the provisions of the Adults with Incapacity (Scotland) Act 2000.

Across all applications, the number of people with dementia has continued to rise in the 65+ age group (1,128 in 2015/16) (the percentage has decreased from a high of 91% in 2011/12 and is 86% this year), whilst the number of people with a learning disability has risen in the 45-64 age group (232 in 2015/16) (the percentage has decreased from a high of 56% in 2013/14 to 51% this year).

Seventy five percent (820) of adults with a learning disability placed on welfare guardianship in the past year were under the age of 45. Forty six percent (506) were under 25 years of age.

For people with dementia, 95% (1128) were granted where the adult was over 65 years of age.

In the 25-44 age group, learning disability was the cause of incapacity in 88% (314) of orders granted, with adults with acquired brain injury 6% (23) of orders granted. In the 45-64 age-group, learning disability was the cause of incapacity in 51% (232) of orders. In this age group, just over a quarter (26%, 118) of adults had incapacity related to alcohol related brain damage or acquired brain injury.

Local authority and private applications and primary cause of incapacity

Table 4.2 Welfare guardianship applications 2015/16 - local authority and private applications by primary cause of incapacity

	Primary diagnosis as percentage of all orders			
	Local authority	**%**	**Private**	**%**
Acquired Brain Injury	33	5%	103	5%
Alcohol Related Brain Disorder	73	11%	40	2%
Dementia/ Alzheimer's Disease	259	38%	934	47%
Learning Disability	243	36%	855	43%
Mental Illness	54	8%	27	1%
Other	16	2%	20	1%
Total	**678**	**100%**	**1979**	**100%**

There were differences between local authority and private applications in the primary causes of incapacity underpinning the application. This year, there were a higher proportion of private applications (47%) than local authority applications (38%) where dementia was the primary cause of incapacity. There was an increase of 16% (128) private applications where dementia was the primary cause of incapacity.

A larger proportion of private guardianship applications (43%) than local authority applications (36%) was for learning disability, although the gap has narrowed since last year (48%, 35%). Private learning disability applications have dropped by 5% (-44) and local authority learning disability applications have risen by 19% (38). For local authority applications, a larger proportion was for alcohol related brain disorder (11%, 73) and mental illness (8%, 54) than in private applications (alcohol related brain disorder 2%, 40; and mental illness 1%, 27).

Table 4.3 Welfare guardianships 2015/16 - apparent renewals in year by local authority and private applications

Primary Diagnosis	Private	Local Authority	Renewals
Acquired Brain Injury	12	10	22
Alcohol Related Brain Disorder	3	17	20
Dementia/ Alzheimer's Disease	19	18	37
Learning Disability	126	74	200
Mental Illness	3	11	14
Other	2	3	5
Total	**165**	**133**	**298**

We also looked at whether the increased use of orders is inflated due to the inclusion of renewal applications. 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 sometimes gaps and overlaps between the expiry of the old order and the granting of the new order, this complicated collating the data in respect of renewals to some extent.

In 2015/16, the number of new orders was 2,657, of which 298 were renewals (11%) (Table 4.3). There has therefore been a slight increase in renewal orders from the previous year (2,455 new orders, of which 10%, 255 were renewals). The number of shorter term orders being renewed each year will add to the total of new orders, but the adults in question will have the benefit of having their necessity for the order judicially reviewed.

Of the 2,359 new orders approved for people who had not previously been on guardianship, a higher proportion (49%, 1,156) were for adults with dementia than for adults with learning disability (38%, 1,098).

5. Duration of guardianship orders

Our interest in this

It is clear from the figures over recent years that progress has been made in addressing the issue of the length of time for which guardianship orders are granted.

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 - something which rarely happens. We agree that an indefinite order may be appropriate in the case of, for example, a very elderly person with advanced dementia, but otherwise we believe it is not good practice or consistent with the principles of the legislation. Furthermore, we feel there is the potential for a breach of Article 5 of the European Convention, where indefinite guardianship is used to authorise deprivation of liberty, since European case law makes clear the need for regular review. This is discussed further in the Commission's advice note on Deprivation of Liberty[1].

What we found

5.1 Variations in indefinite orders by age and diagnosis

Table 5.1 New guardianship orders - orders granted on an indefinite basis (%)

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
All new orders	1336	1521	1766	1929	2115	2455	2657
Indefinite orders	945	960	803	677	684	730	679
Indefinite %	71%	63%	45%	35%	32%	30%	26%

The percentage of new orders granted on an indefinite basis has continued to fall this year to 26% (679). This is still, however, an area that needs continued monitoring.

As of 31 March 2016, there were 4,800 adults on indefinite welfare guardianship orders, 45% of the total of extant welfare guardianship orders (10,735)[2]. 8% (391) of these adults were under the age of 25 and 25% (1,194) under 45 years of age.

[1]Mental Welfare Commission for Scotland. *Advice Note: Deprivation of Liberty (Update 2015)* http://www.mwcscot.org.uk/media/234442/deprivation_of_liberty_final_1.pdf

[2] When a person on guardianship dies the Office for Public Guardian should be informed but this may take time. The OPG then informs the Mental Welfare Commission. Due to delays or missing information our figure of 10735 extant guardianships may not be fully accurate.

Table 5.2 Local authority welfare guardianship applications 2015/16 – indefinite orders as a percentage of primary cause of incapacity

Primary cause of incapacity	Local Authority applications					
	Duration of order (Years)					
	0 - 3	4 - 5	> 5	Indefinite	Totals	Indefinite orders as % of primary diagnosis
Acquired Brain Injury	11	16	1	5	33	15%
Alcohol Related Brain Disorder	39	21	5	8	73	11%
Dementia/ Alzheimer's Disease	91	76	18	74	259	29%
Learning Disability	142	73	15	13	243	5%
Mental Illness	27	14	3	10	54	19%
Other	12	4			16	0%
All Diagnoses	**322**	**204**	**42**	**110**	**678**	**16%**

Table 5.3 Private welfare guardianship applications 2015/16 – indefinite orders as a percentage of primary cause of incapacity

Primary cause of incapacity	Private applications					
	Duration of order (Years)					
	0 - 3	4 - 5	> 5	Indefinite	Totals	Indefinite orders as % of primary diagnosis
Acquired Brain Injury	27	39	22	15	103	15%
Alcohol Related Brain Disorder	11	16	4	9	40	23%
Dementia/ Alzheimer's Disease	125	208	133	468	934	50%
Learning Disability	182	415	188	70	855	8%
Mental Illness	10	9	6	2	27	7%
Other	7	6	2	5	20	25%
All Diagnoses	**362**	**693**	**355**	**569**	**1979**	**29%**

The tables above show numbers of approved welfare guardianship orders for local authority and private applicants, broken down by the identified causes of the adult's incapacity and the length for which the orders have been granted.

Indefinite orders, in general, were much more likely to be granted where there was a private guardian. In 2015/16, 29% of all orders granted to private guardians were granted on an indefinite basis (Table 5.3); for local authorities this stood at 16% (Table 5.2).

Forty seven percent (934) of all private guardianships were for individuals with dementia, and of those, a larger proportion (50%, 468) were indefinite orders. For local authority applications, 38% (259) were for individuals with dementia, and of those, 29% (74), were indefinite orders.

Particularly concerning is the seeking and granting of orders on an indefinite basis for young adults with learning disability – something we have reported on in the past.

Forty three percent (855) of all private guardianships were for individuals with learning disabilities, and of those, 8% (70) were placed on orders on an indefinite basis. For local authority applications, a smaller proportion (36%, 243) were for individuals with learning disabilities, and of those, 5% (13), were indefinite orders.

5.2 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 in respect of both those granted to private parties and to chief social work officers (Tables 10.4-10.6).

In Scotland, 16% of all local authority applications and 29% of all private applications were granted on an indefinite basis.

In two authorities, under 10% were granted on an indefinite basis (North Lanarkshire and Dumfries and Galloway). Eight authorities had over 50% of local authority applications granted on an indefinite basis (including Eilean Siar, Moray, Shetland, Renfrewshire, Aberdeenshire, Stirling, Aberdeen City and Dundee City).

Glasgow City has a smaller number of applications this year (319 compared to 370 in 2014/15). Of these, 30% (111) were granted on an indefinite basis (local authority 19%, 10; private 32%, 101)

Table 5.4 Indefinite orders by primary diagnosis and type of application

Primary diagnosis	Local authority	%	Private	%	All applications	%
Dementia/ Alzheimer's Disease	74	67%	468	82%	542	80%
Learning Disability	13	12%	70	12%	83	12%
Acquired Brain Injury	5	5%	15	3%	20	3%
Alcohol Related Brain Disorder	8	7%	9	2%	17	3%
Mental Illness	10	9%	2	0%	12	2%
Other		0%	5	1%	5	1%
Total	**110**	**100%**	**569**	**100%**	**679**	**100%**

We looked further into the diagnosis of individuals on indefinite orders (Table 5.4). The large majority were individuals with dementia (80%); the remainder were a small number of individuals with acquired brain injury (ABI), alcohol related brain disorder (ARBD), mental illness or severe learning disabilities/complex needs.

We already prioritise visiting individuals whose capacity is related to ARBD, ABI, learning disability and mental illness. In future, we may consider a sharper focus on indefinite orders in relation to the above categories. Where these individuals are receiving registered care, the care provider will be reviewing their care on a six-monthly basis. It is also the responsibility of the local authority to ensure these adults are being reviewed and visited by them in line with statutory timescales. We would encourage local authorities to ensure this is being done.

6. Our visits to adults on guardianship 2015 - 2016

Over the past few years, we have sought to visit more people in categories where we have identified a greater need to intervene. This year, we aimed to target our visits towards adults with learning disabilities or autistic spectrum disorder (40%). Thirty five percent of our visits were to people with acquired brain injury or alcohol related brain damage and 25% for dementia.

Table 6.1 Number of guardianship visits per year

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Guardianship visits	379	566	560	593	550	472

This year, we further refined our visit criteria by identifying candidates whose cases may be more complex, such as being at risk of exploitation or abuse. In 2014/15, we began a pilot exercise, which allows us to scan and identify key words and phrases from guardianship application papers[3][4]. Feedback from the pilot allowed us to 'tune' the process, which has now been formally adopted and usefully informs our visit selection.

In 2015/16, we completed 472 guardianship visits, a 14.2% reduction on the number of visits completed in the previous year. This still represents a 24.5% increase since the 379 in 2010/11 and reflects the growing number of individuals on guardianship orders. In the Commission, we have reduced our overall target for the number of visits each year from 1,900 to 1,500 and consequently have visited fewer individuals subject to guardianship orders this year. However, we have still exceeded the 450 set out in the 2015/16 business plan.

The number of guardianship visits to be undertaken in future years is being reviewed as part of our work to ensure the financial sustainability of the Commission.

Concerns were noted on 128 (27%) of visits. In over half of these cases (60% 77 of 128) further ongoing casework was required by Commission visiting staff.

Table 6.2 shows the 173 separate issues followed up as a result of these visits by category.

[3] Application papers include the application for guardianship and the interlocutor completed by the sheriff court.
[4] Key words include for example 'restraint', 'deprivation' 'liberty' 'seclusion'.

Table 6.2 Issues followed up after guardianship visits in 2015/16

Issue	Number of issues	%
Mobility	9	5%
Communication	3	2%
Legislation	30	17%
Challenging Behaviour	10	6%
Restrictions	12	7%
Medication and consent	23	13%
Activities	21	12%
Finances	15	9%
Placement	29	17%
Environment	15	9%
Other	6	3%
Total No. Concerns	**173**	**100%**

Table 6.3 Accommodation of individuals visited by primary diagnosis

Primary diagnosis			Accommodation					
	Number	%	Care Home	Family Home	Hospital	Supported Tenancy	Other	Total
Learning Disability	187	40%	16%	53%	1%	28%	1%	100%
Dementia	108	23%	78%	13%	6%	3%	0%	100%
Autism Spectrum disorders	58	12%	14%	52%	2%	29%	3%	100%
Acquired Brain Injury	43	9%	80%	15%	0%	4%	2%	100%
Alcohol Related Brain Damage	43	9%	48%	42%	4%	6%	0%	100%
Other	33	7%	48%	12%	18%	3%	18%	100%
Total	**472**	**100%**	**42%**	**32%**	**3%**	**21%**	**2%**	**100%**

Of those adults on guardianship we visited, 42% (198) were resident in care homes and 32% (153) in the family home (37% in 2014/15). We saw a larger proportion in supported tenancies this year (21%, 100) and 3% (13) were in hospital at the time of the visit.

Our visitors judged the accommodation to be of good or adequate standard in 94% (443) of the visits, and the care and treatment was judged as being good or adequate for 96% (451) of those visited. For just two individuals both accommodation and treatment were marked as poor.

> *Adult has moderate learning disability and the more able main carer sibling co-resides. Both are vulnerable in the community and the local authority is welfare guardian. Our initial concern was that support was too minimal and the home extremely unkempt. Both were very resistant to any statutory services visiting them because of their culture and lifestyle. Part of the support plan was to offer low key support since anything more would be rejected by them. The multi-agency assessment was that using formal powers would be traumatic for them and may result in separation. The Commission reviewed the local authority plan some four months later and the guardianship order had been allowed to expire, and the support had been increased incrementally and accepted.*

For those residents in care homes, we found that 80% (158 of 198) had a life history available to staff. This is a smaller proportion of those we visited than last year (84%, 192 of 228) and the 98% observed in 2011/12. Both *Remember I'm Still Me*[5] and *The Standards of Care for Dementia in Scotland (2011)*[6] highlight the importance of an individual personalised approach including 'life story' work.

This year, we found 14% (65) of adults where the guardianship was seen to be particularly well managed. There were just two cases we saw as being poorly managed.

Examples of guardianships being well managed include:

> *Good practice here -guardian has had a discussion with care staff, which is recorded in the file, about delegation of powers and when she would want staff to consult with her. She sees [Adult with learning disabilities] every week and he has very regular contact with a large extended family. Guardian also confirmed that she sees the LA supervisor, [YY], at least every six months, and that [YY] comes to Adult's reviews.*

[5] Remember I'm Still Me. Care Commission and Mental Welfare Commission joint report on the quality of care for people with dementia living in care homes in Scotland (2009) http://www.mwcscot.org.uk/media/53179/CC__MWC_joint_report%20Remember%20Still%20Me.pdf

[6] Scottish Government (2011) *Standards of Care for Dementia in Scotland* http://www.gov.scot/Publications/2011/05/31085414/0

A case review had been convened on the morning of my visit and both the social worker and guardian appeared very happy with the outcome of this. There is good regular communication between the key worker, social worker and guardian. Guardian and key worker are clear about the devolved powers, such as those relating to medical decisions. Staff can and should refer [Adult with dementia] to the doctor if they feel it is warranted, and accompany her to appointments, but should keep guardian fully informed about any change to treatment.

Parents liaise closely with day centre and communication is good. Social work are involved in 6 monthly reviews and have been very supportive during the last year since [the adult with learning disability]'s presentation has changed and she has been diagnosed with dementia. Parents have contact numbers for social work, psychology and community learning disability team and say they always get a prompt and helpful response if they need to contact them.

Examples of guardianships being poorly managed include:

Local authority was welfare guardian but had not visited the adult in the eight months since the order was granted. Social worker had little understanding of duties and responsibilities. No update had been sought by social worker of the care home placement in the same period. The Commission suggested a review take place ASAP and reminded of supervisory duties.

Adult had been admitted to hospital from care setting and provider had not informed the welfare guardian. The adult was in a care home for older people and was considerably younger in age, expressing boredom, and not enough activities being offered. Adult expressed desire for sporting pursuits (swimming) but this had not been offered in care plan. The Commission suggested consideration is given for a more suitable placement, and possible use of a befriender service.

We noted that the principles of the 2000 Act did not appear to be adhered to in 6% (26) of cases, which we followed up and will continue to monitor and, in some cases, will visit again (casework is currently ongoing for thirteen individuals).

In one example, we felt that the individual's past and present wishes were not being fully taken into account. There was no clear note in the care plan in relation to the individual's desire to take part in active outdoor activity such as walking and access to the countryside.

In another example, we felt that care staff were not well informed about the principles of the Act and were not clear about the role of guardianship.

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 include:

- At least 5% (22) of cases where there were concerns about the individual's placement. For a further 3% (15) some reservations had been expressed by the individual themselves, professional staff or the Commission visitor.

  Adult lives in a first floor flat. They said they had difficulty getting up the stairs because of MS, and would like some support for using the bath, but said they had been put down for a transfer.

  Concerned that she is considerably younger than other residents and as such has no peer group, she tells me she is bored and that there is not enough for her to do.

- 28% (89 of 319) in residential/supported accommodation where care staff had had no discussion with the welfare guardian about the potential need to delegate specific powers to the care staff in certain situations.
- In 10% (47 of 472) of cases there was no clear evidence that the guardian had visited the adult in the last 6 months.
- In 29% (92 of 319) of private guardianship cases we found no clear evidence that the adult had been visited by the local authority supervising officer in the last six months.
- 41% (130 of 319) private guardians appeared to have had no recent supervisory visits and for many of these (64%, 83 of 130) there was also no evidence that the adult had been visited by the local authority supervisor in the past six months.
- Nine adults were subject to restraint (6) or seclusion (3) without proper authorisation in guardianship powers. We would encourage welfare guardians to seek these powers where necessary, and if not authorised in the order, return to the sheriff to seek additional powers.
- Two adults had restrictions on who was allowed to visit without proper legal authorisation. This emphasises the need for care staff be very clear about any delegation of powers from the guardian, and to have a copy of the powers (interlocutor) for reference in the case file.
- There was one case where the S47 certificate was not thought to be appropriate

  [Adult] has limited capacity and is not able to engage fully in decisions involving her medical care. Although there was a section 47 certificate in place it stated "admin of meds and general issues pertaining to care and welfare issues". This did not appear to cover the treatment or meds specified. A DNCPR form was also in place which stated "suspected lung cancer" - when I questioned the staff on this they had no knowledge that this diagnosis could be a possibility. They were to discuss this issue with the GP as a matter of urgency and request an updated section 47 certificate.

- 29 of 208 guardians where there was a section 47 certificate in place 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) (and of these 13 had no treatment plan). These situations were primarily when Section 47 certificates or DNACPR[7] were being considered mainly by GP's in care homes.

We discussed issues relating to Section 47 and medication in registered settings. The Commission practitioner advised care staff to contact the GP to produce or update the S47 or treatment plan. For 5% (23) individuals, the Commission practitioner noted this as a concern for further follow up.

Examples include:

- Section 47 certificates not being completed when the adult clearly lacks capacity.
- Section 47 being completed without discussion with the proxy decision maker.
- Section 47 certificates which are in relation to complex care where no treatment plan is attached.
- In some cases the s47 certificate was out of date. Sometimes there was a need for the S47 certificate to be more readily accessible and visible.

The Code of Practice and Mental Welfare Commission guidance[8] is very clear in relation to the use of Section 47 certificates. Where an individual does not have the capacity to consent to the treatment they require, the doctor should formally assess their capacity and on finding someone incapable of consenting, then complete a certificate. Where this treatment is complex, they should complete a treatment plan. If this is not done then the treatment given is unlawful.

If there is a proxy decision maker, namely a welfare guardian or someone acting with a power of attorney, then the medical practitioner should also discuss the treatment with them. There is a clear space on the certificate for the doctor to put the name of the proxy decision maker. Care staff could assist the doctor in identifying the proxy from their knowledge of the adult.

[7] DNACPR: Do not attempt cardiac pulmonary resuscitation
[8] Mental Welfare Commission for Scotland (2010) *Consent to treatment* http://www.mwcscot.org.uk/media/51774/Consent%20to%20Treatment.pdf

7. Adults with Incapacity (Scotland) Act 2000, 2015-2016, Section 48 (regulated treatments) & Section 50 (disagreements with proxy).

Table 7.1 Section 48/50 requests and certificates issued by types of treatment

Types of treatment	Section 48/50 Requests	Certificates Issued
Medication to reduce sex drive	20	19*
Electroconvulsive therapy (ECT)	19	14**
Treatment likely to lead to sterilisation	0	0
Termination of pregnancy	0	0
Dispute (Section 50)	1	1
Total	**40**	**34**

***Treatment not authorised on one occasion
****Two certificates not issued as patient had capacity; one patient was not physically well enough for ECT; 2 certificates refused as patient refusing/resisting and MHA recommended

Our interest in this

The Commission has a responsibility under the Adults with Incapacity (Scotland) 2000 Act to provide independent medical opinions 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 doctor can request that the Commission arrange an opinion by an appropriate specialist to resolve the dispute (Section 50 nominated medical practitioner).

What we found

There were 39 requests for Section 48 visits, which is 15% fewer than last year. Of the 19 Electroconvulsive therapy (ECT) requests, one patient was thought to be too physically unwell at the time of the second opinion doctor visit so this treatment was not approved. Two certificates were refused for ECT, where the Mental Health Act was thought to be more appropriate due to patient resistance to treatment. In two other cases, the patients were judged to have capacity to consent at the time of assessment.

One request for a Section 50 assessment was received in the current reporting year. The majority of Section 50 disputes relate to the treatment of people with mental illness, learning disability or related condition. This case was different as the patient was not thought to have a mental disorder, but was incapable due to inability to communicate because of the treatment being given for physical illness. The Section 50 assessment was undertaken by a consultant in anaesthetics and critical care.

8. Report on a Survey of Private Welfare Guardians (2016)

Why we undertook this survey

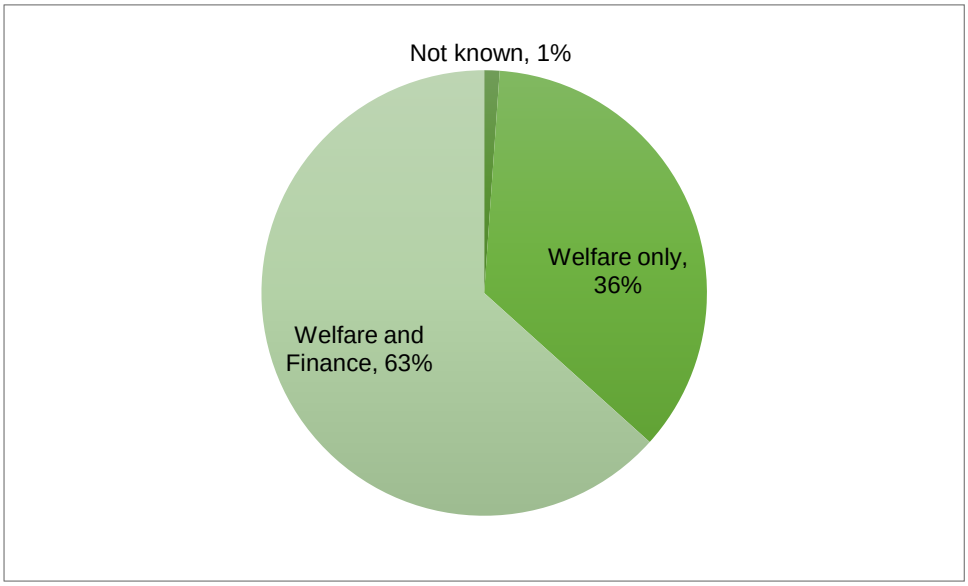
In 2014, we undertook a survey of recently appointed private welfare guardians (within three to six months of the order being granted)[9] . This year, we felt it was important to continue to find out why private welfare guardians were applying to take on this role. We sought the views of guardians who had been acting for at least three years (guardianship granted in 2013 or earlier if the 2013 order was a renewal).

We wanted to find out who had applied for welfare guardianship, what had triggered their application and whether they believed applying for guardianship had been worthwhile.

In February-March 2016, we sent out a brief questionnaire to the private welfare guardians of 286 adults with incapacity. We received 90 responses.

Type of order

Figure 8.1 Type of order (n=90)

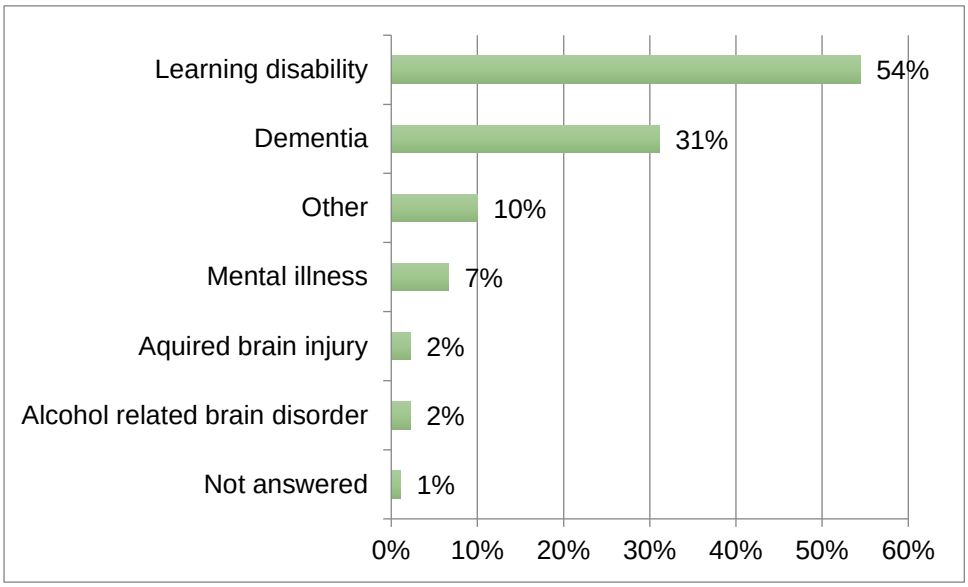


Nearly two-thirds (63%, 57) were both welfare and financial guardians, compared with nearly three-quarters (72%) in the 2014 survey. 36% (32) were welfare only guardians.

[9] Mental Welfare Commission (2015) Report on a Survey of Private Welfare Guardians (2014) http://www.mwcscot.org.uk/media/221620/report_on_survey_of_private_guardians_2014.pdf

Type of incapacity

Figure 8.2 Adult's diagnosis (n=90)



Around half (54%, 49) were a guardian for someone with learning disability; nearly a third (31%, 28) were a guardian for someone with dementia. (More than one diagnosis could be identified).

In the nine 'other' cases, five were for adults with cerebral palsy, a condition which does not necessarily indicate any cognitive impairment, but is often associated with learning difficulties.

"The people involved, doctor, social worker, bank have been very helpful and understanding. It is not as daunting as what I thought it would be"

How did you find out about guardianship?

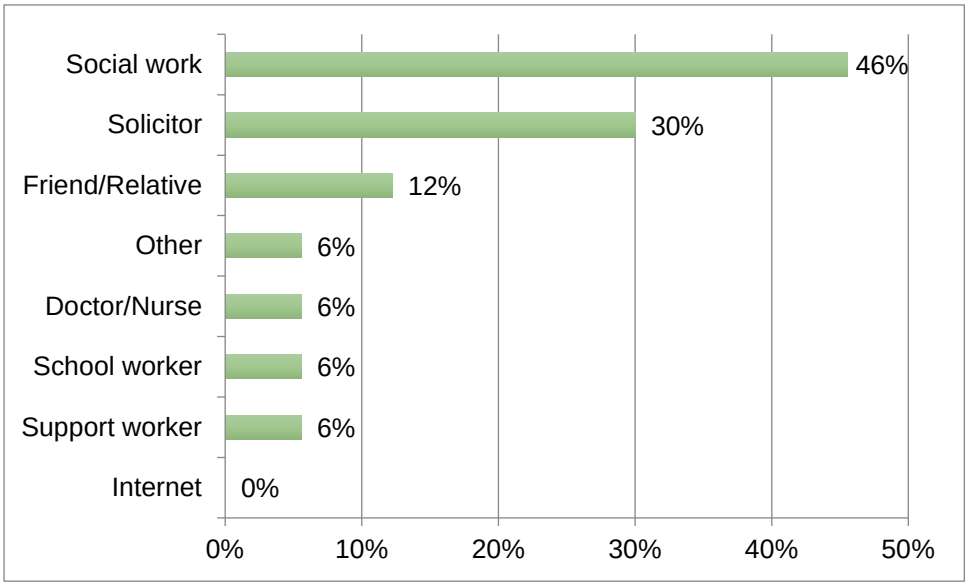
Social workers and solicitors remained the main source of information about guardianship. Most guardians said they had first been told about guardianship by a social worker (42%, 41) or a solicitor (30%, 27).

In only 5% of cases were doctors and nurses identified as the first source of information about guardianship. Healthcare workers may need to be made more aware of the Adults with Incapacity (Scotland) Act 2000 and the importance of sharing information about guardianship.

Nearly a quarter of guardians for a person with a learning disability told us friends and relatives, school workers, support workers and other support groups were the first to tell them about guardianship.

In cases were the guardian initially sought to resolve financial matters but then took out welfare powers as well (41%, 37), they were more likely to have been informed about guardianship by a solicitor than others (35%, 13) but social workers were still the biggest group (46%, 17).

Figure 8.3 How guardian first found out about welfare guardianship (n=90)



"My father's case is not a complex one therefore things are going along fine. There were some issues at the beginning but the Office of the Public Guardian offered good support to get things up and running"

Why did the guardian apply?

"Guardianship is beneficial to protect vulnerable adults and to ensure they have a voice to be heard"

We asked guardians to select from five statements reflecting reasons for taking out welfare guardianship. One or more statements could be chosen to reflect the guardian's own situation; additional reasons could also be noted. Most selected two to three reasons each.

I applied for Welfare Guardianship because: (n=90)	**No.**	**%**
I thought it would be a good idea to have the formal role of guardian	34	38
I needed financial powers, and took welfare powers at the same time	37	41
I was told if I did not then the local authority/social work would	20	22
I was told I had to, if I wanted a say in what happens	55	61
I was told I had to, to apply for and manage SDS/tenancy/ contract etc.	18	20

In the 2014 survey of new guardians, almost a third (32%) agreed with the statement "I thought it would be a good idea to have the formal role of guardian". In this year's 2016 survey of guardians, 38% agreed with this statement.

The Commission has been concerned that some welfare powers may be being sought, and some welfare guardians appointed, even though they would not have been seeking welfare guardianship if there had been no financial trigger for seeking the order. 57 guardians responding to this survey had both welfare and financial powers. Of these, 58% (33) told us they agreed with the statement "I needed financial powers, and took welfare powers at the same time". Of the 18 of these who had first heard about guardianship from a solicitor, 12 agreed with this statement.

The majority of guardians (welfare only or welfare and financial) agreed with the statements: "I applied for guardianship because it was necessary to authorise decision making; care arrangements are very complex" (64%, 58); and "I was told I had to, if I wanted a say in what happens" (61%, 55). This applied across guardians of adults with different types of incapacity.

"Although I would advise others to apply for welfare guardianship I would do so with caution; it took 9 months of solicitors etc. and added stress to what was already a difficult time"

A Practice Note has been issued by Glasgow Sheriff Court in June 2016 to say that if the principal reason for submitting a guardianship application seeking financial powers is to enable the proposed guardian to administer self-directed support or other similar direct payments, consideration should be given as to whether seeking alternative financial powers under the Act might be the less restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention[10].

In our survey, only one guardian selected "I had to apply for and manage SDS/ tenancy/ contracts/ other benefits" as the sole reason for applying. Seventeen other guardians (19%) told us this was one of the main reasons for applying for guardianship.

Most of the ten additional comments added to the already listed statements or explained why more than one was chosen. Guardians mentioned: a feeling of duty or family responsibility; difficulties they had experienced with care providers; or the need to protect the adult against exploitation.

"I feel that guardianship process gives me security in knowing I will always be listened to when I advocate for my son and help him plan his future and make decisions, which he is not able to make on his own"

Was welfare guardianship worth it?

We asked two questions about the guardian's experience since the order had been granted; as this was three years or more ago, guardians would have had sufficient time to form a view about whether guardianship had been worthwhile.

Over two-thirds (68%, 61) said they had found being welfare guardian helpful; over a quarter (28%, 25) said it had not made much difference. Only two guardians felt strongly enough to say it had not been helpful.

Nearly three-quarters (72%, 23) of guardians with welfare powers alone found it helpful, with just 22% (7) saying it had not made much difference. Of guardians with welfare and financial powers, two-thirds (65%, 37) found it helpful (with one third (32%, 18) saying it had not made much difference).

Guardians of people with a diagnosis of dementia overwhelmingly said that it had been helpful (86%, 24) with only one in ten (11%, 3) saying it had not made much difference.

[10] Glasgow AWI Court – practice update #1 – June 2016
http://www.rfpg.org/images/easyblog_images/690/AWI-practice-update---1---June-2016.doc

"All parents, and siblings, should be encouraged to become welfare guardians. They are the people who have only the best interest at heart. Professionals write and speak to suit their jobs and their bias. They move on and couldn't care less. Families don't!"

The nineteen guardians of people who had neither learning disability nor dementia were equally divided on whether it helped much or not.

Nine out of 10 guardians (92%, 83) agreed with the statement: "Would you advise others in your situation to apply for Welfare Guardianship?" Only a few (3%, 3) said they would not.

"I believe that in complex cases the guardianship would be better dealt with by someone outside the immediate family. This has caused me nothing but stress. I am currently applying to court to remove myself from guardianship. It has been helpful in terms of his care as I was able to get him out of hospital (he was there for 8 years unnecessarily)"

9. Policy developments affecting welfare guardianships

Mental Health Officer reports

Local authorities have to plan and ensure an adequate mental health officer (MHO) response in the face of sometimes dramatic changes in demand. This is a statutory duty for local authorities to deliver within clear timescales (Section 32, 2003 Act)[11]. It is clear that there is mounting workload pressure on local authority mental health officers to keep up with their duty to provide 'suitability' reports[12] of proposed welfare guardians within the statutory time frame.

We would remind senior managers in local authorities of a sheriff court decision to accept a private welfare guardianship application that did not have the MHO suitability report, and order the local authority to provide the report within fourteen days. Some courts might have decided that this was an incomplete application since the MHO report had not been produced and lodged. This does not constitute a change in the law but does highlight the possibility of some courts taking a different interpretation of an application[13].

Supported decision-making

When someone has impaired capacity, it is important to remember that this does not necessarily impact on all of their decision-making abilities. It is crucial that the person is supported to make full use of their abilities in shaping their care and support. Careful consideration must be given to a person's capacity at all stages of the process to properly inform judgments about the extent to which they are able to make decisions about their own needs and support. This is a very important aspect of working alongside someone who needs support to express their preference. In 2016, the Commission and Professor Jill Stavert of Napier University worked together to produce a Guide to Supported Decision Making (SDM)[14]. This is the first document that sets out where SDM comes from and seeks to show how it relates to Scots law and practice.

Supported decision-making is a key requirement of the UN Convention on the Rights of Persons with Disabilities. Article 12 of the Convention obliges states to 'provide access by persons with disabilities to the support they may require in exercising their legal capacity'. It is likely that there will be a formal review shortly of the UK's compliance with the Convention. In advance of this, the Essex Autonomy Project (EAP) undertook a detailed review[15] of the compliance with the Convention of UK incapacity law, including the Adults with Incapacity (Scotland) Act.

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[11] Mental Health (Care and Treatment)(Scotland) Act 2003
[12] Adult with Incapacity (Scotland) Act 2000
[13] Hamilton Sheriff Court SS & MM, Applicants 25.09.15/Mental Capacity Law Newsletter Feb 2016:Issue 62
[14] Due for publication in October 2016
[15] The Essex Autonomy Project. Three Jurisdictions Report. Towards Compliance with CRPD Art. 12 in Capacity/Incapacity Legislation across the UK http://autonomy.essex.ac.uk/eap-three-jurisdictions-report

The EAP review found that changes will need to be made to the Act to make it fully compliant with the Convention. The Commission hopes that these changes will be taken forward by the government as part of the review of the 2000 Act prompted by the *Cheshire West* decision.

In the meantime, there are some key points arising from the SDM guidance and the work of the Essex Autonomy Project which should be borne in mind by anyone involved in welfare guardianship:

- Guardianship is only justified if it can be established that, even with all reasonable support, the person cannot make relevant decisions for themselves, and guardianship powers should be limited to those decisions the person genuinely cannot make, even with support.
- The fact that support is not available or has not been tried should not be a justification for guardianship.
- It is not always necessary or right to give effect to what a person says they want, but the starting point for any decision about a person's welfare should be respect for their rights, will and preference. Contravening the person's known will and preference is justifiable only if it is a proportional and necessary means of protecting the full range of the person's rights, freedoms and interests.

Concerns have been expressed about the involvement of the adult in the process of applying for guardianship. The Act requires that account must be taken of the present and past wishes and feelings of the adult, and the UNCRPD reinforces this. It should be the norm for the adult to be supported to express views on any application for guardianship and to participate in the hearing, so far as they are able and wish to do so.

We welcome the recent practice guidance for the Sheriffdom of Lothian and Borders[16] that applications:

> "must include averments as to the present and past wishes and feelings of the adult so far as they can be ascertained. If it is not possible to ascertain them, the writ must include averments (1) as to why this is not possible and (2) as to the steps taken, if any, (including any assistance and/or support provided) with a view to ascertaining them"

[16] Sheriffdom of Lothian and Borders, Practice Note No 1, 2016. Applications under the Adults with Incapacity (Scotland) Act 2000

Delayed discharge pilot

For some years there has been considerable interest in the number of patients who cannot be discharged due to their incapacity, and who require welfare guardianship orders. These patients are medically fit for discharge, but lack capacity to agree to be discharged, to a care home, and require a court appointed guardian to make these decisions. We were pleased to learn that the Scottish Government has plans to run a pilot in Lothian to expedite guardianship applications. It aims to review, test and develop good discharge planning procedures and practices with a view to help inform the development of national guidance[17].

[17] Lothian Guardianship Pilot. Brief provided by the Health and Social Care Directorate, Scottish Government 09/08/2016. At the June Delayed Discharge census there were 231 patients delayed across Scotland waiting for a Guardian to be appointed. These patients are medically fit for discharge, but lack capacity to agree to be discharged, and the move to a care home, and require a court appointed Guardian to make these decisions. This delay results in a poor outcome for the individual, many of who are delayed for several months. At February in Lothian eight patients waited over three months, and three waited over six months.

10. Appendix of tables

Table 10.1 Welfare guardianship applications 2015/16 – 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	%
Aberdeen City	2	3%	3	4%	31	40%	35	45%	5	6%	1	1%	77	100%
Aberdeenshire	1	1%	4	5%	21	26%	50	63%	3	4%	1	1%	80	100%
Angus	2	4%	3	6%	25	53%	13	28%	2	4%	2	4%	47	100%
Argyll and Bute	1	2%		0%	21	50%	18	43%	2	5%		0%	42	100%
City of Edinburgh	6	4%	5	4%	58	41%	62	44%	6	4%	5	4%	142	100%
Clackmannanshire		0%	3	9%	13	41%	16	50%		0%		0%	32	100%
Dumfries and Galloway	5	4%	3	3%	47	40%	58	50%	3	3%	1	1%	117	100%
Dundee City	3	4%	1	1%	34	49%	21	30%	5	7%	6	9%	70	100%
East Ayrshire	4	4%	3	3%	43	43%	49	49%		0%		0%	99	100%
East Dunbartonshire	1	3%	1	3%	22	56%	13	33%	1	3%	1	3%	39	100%
East Lothian	1	2%	3	7%	19	41%	23	50%		0%		0%	46	100%
East Renfrewshire	3	8%	1	3%	13	35%	20	54%		0%		0%	37	100%
Eilean Siar		0%	1	6%	13	76%	3	18%		0%		0%	17	100%
Falkirk	6	7%	2	2%	33	36%	48	53%	2	2%		0%	91	100%
Fife	13	6%	7	3%	93	44%	81	39%	10	5%	5	2%	209	100%
Glasgow City	20	5%	20	5%	182	49%	135	36%	11	3%	3	1%	371	100%
Highland	2	1%	6	4%	70	51%	53	38%	4	3%	3	2%	138	100%
Inverclyde	3	17%	1	6%	7	39%	6	33%	1	6%		0%	18	100%
Midlothian	1	3%	2	7%	12	40%	13	43%	2	7%		0%	30	100%

All orders	Acquired Brain Injury	%	Alcohol Related Brain Disorder	%	Dementia/ Alzheimer's Disease	%	Learning Disability	%	Mental Illness	%	Other	%	Total	%
Moray	1	2%	1	2%	22	51%	18	42%	1	2%		0%	43	100%
North Ayrshire	8	12%	3	5%	28	43%	22	34%	2	3%	2	3%	65	100%
North Lanarkshire	13	7%	10	5%	66	36%	87	47%	5	3%	3	2%	184	100%
Orkney	2	11%		0%	4	22%	10	56%	2	11%		0%	18	100%
Perth and Kinross	6	9%	4	6%	26	40%	26	40%	3	5%		0%	65	100%
Renfrewshire	12	9%	4	3%	81	57%	40	28%	3	2%	1	1%	141	100%
Scottish Borders	2	5%	1	3%	6	15%	28	72%	2	5%		0%	39	100%
Shetland		0%		0%	3	50%	3	50%		0%		0%	6	100%
South Ayrshire	5	5%	6	6%	46	47%	39	40%	2	2%		0%	98	100%
South Lanarkshire	8	5%	14	8%	74	44%	67	40%	3	2%	1	1%	167	100%
Stirling		0%	1	3%	17	52%	14	42%	1	3%		0%	33	100%
West Dunbartonshire	2	4%		0%	44	79%	10	18%		0%		0%	56	100%
West Lothian	3	8%		0%	19	48%	17	43%		0%	1	3%	40	100%
Scotland	**136**	**5%**	**113**	**4%**	**1193**	**45%**	**1098**	**41%**	**81**	**3%**	**36**	**1%**	**2657**	**100%**

Table 10.2 Welfare guardianship applications 2015/16 – 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	%
Aberdeen City	1	4%	2	8%	8	31%	10	38%	5	19%		0%	26	100%
Aberdeenshire		0%	3	14%	4	19%	11	52%	3	14%		0%	21	100%
Angus		0%	3	20%	6	40%	3	20%	1	7%	2	13 %	15	100%
Argyll and Bute		0%		0%	9	47%	9	47%	1	5%		0%	19	100%
City of Edinburgh	3	6%	5	10%	22	45%	11	22%	4	8%	4	8%	49	100%
Clackmannanshire		0%	1	20%	3	60%	1	20%		0%		0%	5	100%
Dumfries and Galloway	2	4%	2	4%	11	23%	29	62%	2	4%	1	2%	47	100%
Dundee City	1	5%		0%	7	35%	5	25%	4	20%	3	15 %	20	100%
East Ayrshire	2	8%	2	8%	9	38%	11	46%		0%		0%	24	100%
East Dunbartonshire		0%		0%	1	33%	1	33%	1	33%		0%	3	100%
East Lothian	1	6%	2	13%	6	38%	7	44%		0%		0%	16	100%
East Renfrewshire	1	11%	1	11%	3	33%	4	44%		0%		0%	9	100%
Eilean Siar		0%	1	20%	4	80%		0%		0%		0%	5	100%
Falkirk	1	4%	1	4%	8	32%	13	52%	2	8%		0%	25	100%
Fife	3	5%	7	11%	28	42%	22	33%	5	8%	1	2%	66	100%
Glasgow City	5	10%	8	15%	20	38%	14	27%	3	6%	2	4%	52	100%
Highland	1	2%	5	12%	17	40%	17	40%	2	5%		0%	42	100%
Inverclyde	1	11%	1	11%	5	56%	1	11%	1	11%		0%	9	100%
Midlothian		0%		0%	3	27%	6	55%	2	18%		0%	11	100%
Moray		0%		0%	7	54%	5	38%	1	8%		0%	13	100%

Local authority orders	Acquired Brain Injury	%	Alcohol Related Brain Disorder	%	Dementia/ Alzheimer's Disease	%	Learning Disability	%	Mental Illness	%	Other	%	Total	%
North Ayrshire	1	14%	2	29%		0%	1	14%	2	29%	1	14 %	7	100%
North Lanarkshire	3	8%	7	18%	10	26%	15	38%	4	10%		0%	39	100%
Orkney	1	25%		0%	1	25%	1	25%	1	25%		0%	4	100%
Perth and Kinross	2	13%	3	19%	7	44%	3	19%	1	6%		0%	16	100%
Renfrewshire	1	3%	3	8%	18	49%	12	32%	2	5%	1	3%	37	100%
Scottish Borders	1	7%	1	7%	1	7%	9	64%	2	14%		0%	14	100%
Shetland		0%		0%	1	100%		0%		0%		0%	1	100%
South Ayrshire	1	5%	4	18%	11	50%	4	18%	2	9%		0%	22	100%
South Lanarkshire	1	3%	8	22%	15	42%	10	28%	2	6%		0%	36	100%
Stirling		0%	1	20%	2	40%	1	20%	1	20%		0%	5	100%
West Dunbartonshire		0%		0%	10	91%	1	9%		0%		0%	11	100%
West Lothian		0%		0%	2	22%	6	67%		0%	1	11 %	9	100%
Scotland	**33**	**5%**	**73**	**11%**	**259**	**38%**	**243**	**36%**	**54**	**8%**	**16**	**2%**	**678**	**100%**

Table 10.3 Welfare guardianship applications 2015/16 – 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	%
Aberdeen City	1	2%	1	2%	23	45%	25	49%		0%	1	2%	51	100%
Aberdeenshire	1	2%	1	2%	17	29%	39	66%		0%	1	2%	59	100%
Angus	2	6%		0%	19	59%	10	31%	1	3%		0%	32	100%
Argyll and Bute	1	4%		0%	12	52%	9	39%	1	4%		0%	23	100%
City of Edinburgh	3	3%		0%	36	39%	51	55%	2	2%	1	1%	93	100%
Clackmannanshire		0%	2	7%	10	37%	15	56%		0%		0%	27	100%
Dumfries and Galloway	3	4%	1	1%	36	51%	29	41%	1	1%		0%	70	100%
Dundee City	2	4%	1	2%	27	54%	16	32%	1	2%	3	6%	50	100%
East Ayrshire	2	3%	1	1%	34	45%	38	51%		0%		0%	75	100%
East Dunbartonshire	1	3%	1	3%	21	58%	12	33%		0%	1	3%	36	100%
East Lothian		0%	1	3%	13	43%	16	53%		0%		0%	30	100%
East Renfrewshire	2	7%		0%	10	36%	16	57%		0%		0%	28	100%
Eilean Siar		0%		0%	9	75%	3	25%		0%		0%	12	100%
Falkirk	5	8%	1	2%	25	38%	35	53%		0%		0%	66	100%
Fife	10	7%		0%	65	45%	59	41%	5	3%	4	3%	143	100%
Glasgow City	15	5%	12	4%	162	51%	121	38%	8	3%	1	0%	319	100%
Highland	1	1%	1	1%	53	55%	36	38%	2	2%	3	3%	96	100%
Inverclyde	2	22%		0%	2	22%	5	56%		0%		0%	9	100%
Midlothian	1	5%	2	11%	9	47%	7	37%		0%		0%	19	100%
Moray	1	3%	1	3%	15	50%	13	43%		0%		0%	30	100%

Private orders	Acquired Brain Injury	%	Alcohol Related Brain Disorder	%	Dementia/ Alzheimer's Disease	%	Learning Disability	%	Mental Illness	%	Other	%	Total	%
North Ayrshire	7	12%	1	2%	28	48%	21	36%		0%	1	2%	58	100%
North Lanarkshire	10	7%	3	2%	56	39%	72	50%	1	1%	3	2%	145	100%
Orkney	1	7%		0%	3	21%	9	64%	1	7%		0%	14	100%
Perth and Kinross	4	8%	1	2%	19	39%	23	47%	2	4%		0%	49	100%
Renfrewshire	11	11%	1	1%	63	61%	28	27%	1	1%		0%	104	100%
Scottish Borders	1	4%		0%	5	20%	19	76%		0%		0%	25	100%
Shetland		0%		0%	2	40%	3	60%		0%		0%	5	100%
South Ayrshire	4	5%	2	3%	35	46%	35	46%		0%		0%	76	100%
South Lanarkshire	7	5%	6	5%	59	45%	57	44%	1	1%	1	1%	131	100%
Stirling		0%		0%	15	54%	13	46%		0%		0%	28	100%
West Dunbartonshire	2	4%		0%	34	76%	9	20%		0%		0%	45	100%
West Lothian	3	10%		0%	17	55%	11	35%		0%		0%	31	100%
Scotland	**103**	**5%**	**40**	**2%**	**934**	**47%**	**855**	**43%**	**27**	**1%**	**20**	**1%**	**1979**	**100%**

Table 10.4 Duration of orders granted to local authorities 2015/16

Local Authority	Duration of Orders in Years					
	0 to 3	4 to 5	Over 5	Indefinite	Total	Indefinite as % of total
Aberdeen City	6	12		8	26	31%
Aberdeenshire	9	3		9	21	43%
Angus	12	2		1	15	7%
Argyll and Bute	14	2	1	2	19	11%
City of Edinburgh	37	8	1	3	49	6%
Clackmannanshire	1	1		3	5	60%
Dumfries and Galloway	43	4			47	0%
Dundee City	6	5	4	5	20	25%
East Ayrshire	16	7		1	24	4%
East Dunbartonshire	1			2	3	67%
East Lothian	9	6	1		16	0%
East Renfrewshire	1	7		1	9	11%
Eilean Siar	1		1	3	5	60%
Falkirk	15	2	3	5	25	20%
Fife	28	21	10	7	66	11%
Glasgow City	16	23	3	10	52	19%
Highland	15	16	1	10	42	24%
Inverclyde	6	3			9	0%
Midlothian	4	6	1		11	0%
Moray	4	2		7	13	54%
North Ayrshire	5			2	7	29%
North Lanarkshire	25	12		2	39	5%
Orkney		4			4	0%
Perth and Kinross	2	6	5	3	16	19%
Renfrewshire	11	4	3	19	37	51%
Scottish Borders	4	7	2	1	14	7%
Shetland				1	1	100%
South Ayrshire	11	11			22	0%
South Lanarkshire	11	19	5	1	36	3%
Stirling	1	2		2	5	40%
West Dunbartonshire	2	8		1	11	9%
West Lothian	6	1	1	1	9	11%
Scotland	**322**	**204**	**42**	**110**	**678**	**16%**

Table 10.5 Duration of orders granted to private individuals 2015/16

Private	Duration of Orders in Years					
	0 to 3	4 to 5	Over 5	Indefinite	Total	Indefinite as % of total
Aberdeen City	3	19	2	27	51	53%
Aberdeenshire	4	14	7	34	59	58%
Angus	5	16	4	7	32	22%
Argyll and Bute	7	8	5	3	23	13%
City of Edinburgh	20	36	21	16	93	17%
Clackmannanshire	2	10	6	9	27	33%
Dumfries and Galloway	51	14	3	2	70	3%
Dundee City	2	3	19	26	50	52%
East Ayrshire	17	23	19	16	75	21%
East Dunbartonshire	7	11	7	11	36	31%
East Lothian	7	15	3	5	30	17%
East Renfrewshire	2	11	2	13	28	46%
Eilean Siar			1	11	12	92%
Falkirk	4	37	7	18	66	27%
Fife	25	40	45	33	143	23%
Glasgow City	35	143	40	101	319	32%
Highland	15	29	16	36	96	38%
Inverclyde	6	3			9	0%
Midlothian	1	8	2	8	19	42%
Moray	1	5	5	19	30	63%
North Ayrshire	9	23	16	10	58	17%
North Lanarkshire	51	61	21	12	145	8%
Orkney	1	9	2	2	14	14%
Perth and Kinross	5	4	26	14	49	29%
Renfrewshire	17	16	10	61	104	59%
Scottish Borders	4	11	7	3	25	12%
Shetland		2		3	5	60%
South Ayrshire	40	19	5	12	76	16%
South Lanarkshire	9	62	34	26	131	20%
Stirling	4	8	1	15	28	54%
West Dunbartonshire	4	18	12	11	45	24%
West Lothian	4	15	7	5	31	16%
Scotland	**362**	**693**	**355**	**569**	**1979**	**29%**

Table 10.6 Duration of all orders granted 2015/16

All	Duration of Orders in Years					
	0 to 3	4 to 5	Over 5	Indefinite	Total	Indefinite as % of total
Aberdeen City	9	31	2	35	77	45%
Aberdeenshire	13	17	7	43	80	54%
Angus	17	18	4	8	47	17%
Argyll and Bute	21	10	6	5	42	12%
City of Edinburgh	57	44	22	19	142	13%
Clackmannanshire	3	11	6	12	32	38%
Dumfries and Galloway	94	18	3	2	117	2%
Dundee City	8	8	23	31	70	44%
East Ayrshire	33	30	19	17	99	17%
East Dunbartonshire	8	11	7	13	39	33%
East Lothian	16	21	4	5	46	11%
East Renfrewshire	3	18	2	14	37	38%
Eilean Siar	1		2	14	17	82%
Falkirk	19	39	10	23	91	25%
Fife	53	61	55	40	209	19%
Glasgow City	51	166	43	111	371	30%
Highland	30	45	17	46	138	33%
Inverclyde	12	6			18	0%
Midlothian	5	14	3	8	30	27%
Moray	5	7	5	26	43	60%
North Ayrshire	14	23	16	12	65	18%
North Lanarkshire	76	73	21	14	184	8%
Orkney	1	13	2	2	18	11%
Perth and Kinross	7	10	31	17	65	26%
Renfrewshire	28	20	13	80	141	57%
Scottish Borders	8	18	9	4	39	10%
Shetland		2		4	6	67%
South Ayrshire	51	30	5	12	98	12%
South Lanarkshire	20	81	39	27	167	16%
Stirling	5	10	1	17	33	52%
West Dunbartonshire	6	26	12	12	56	21%
West Lothian	10	16	8	6	40	15%
Scotland	**684**	**897**	**397**	**679**	**2657**	**26%**


npm
national
preventive
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mentalwelfare
commission for scotland

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@mwcscot.org.uk
www.mwcscot.org.uk

Mental Welfare Commission (SEP 16)