

# Guardianship and young adults

The use of welfare  
guardianship under the  
Adults with Incapacity  
(Scotland) Act 2000 for  
people aged under 25

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## Who we are

We are an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. Our duties are set out in mental health law. We are made up of people who have understanding and experience of mental health and learning disability. Some of us have a background in healthcare, social work or the law. Some of us are service users or carers.

We believe that everyone with a mental illness, learning disability or other mental disorder should:

- be treated with dignity and respect;
- have the right to ethical and lawful treatment and to live free from abuse, neglect or discrimination;
- get the care and treatment that best suits his or her needs;
- be enabled to lead as fulfilling a life as possible.

## What we do

- We find out whether individual treatment is in line with the law and practices that we know work well.
- We challenge those who provide services for people with a mental illness or learning disability, to make sure they provide the highest standards of care.
- We provide advice information and guidance to people who use or provide mental health and learning disability services.
- We have a strong and influential voice in how services and policies are developed.
- We gather information about how mental health and adults with incapacity law are being applied. We use that information to promote good use of these laws across Scotland.

## Our interest in the use of guardianship and young people

In the Adults with Incapacity (Scotland) Act 2000 (the Act), welfare guardianship provides the means to protect people who lack capacity to make particular decisions or take particular actions for themselves. Its use is underpinned by a set of general principles. These principles require that, in taking any actions under the Act:

- the adult's present and past wishes and feelings and the views of the nearest relative and primary carer of the adult are taken into account;
- any interventions are of benefit to the adult;
- interventions are the least restrictive option in terms of the freedom of the adult; and
- the guardian encourages the adult to exercise what skills they have to the extent possible and to help the adult develop new skills.

The Mental Welfare Commission for Scotland has a safeguarding role in relation to welfare guardianship orders. Beyond this, our responsibilities under the Mental Health (Care & Treatment) (Scotland) Act 2003 extend to all adults who have an incapacity as a result of a mental illness, learning disability or other mental disorder. We scrutinise guardianship applications, correspond with adults and their guardians and ask the guardian or local authority supervising officer advise us of any changes of individual circumstances, or concerns they might have. Where we have concerns about the welfare guardianship arrangements, we will also visit the individual concerned.

Through our monitoring and scrutiny work we have become aware of the increasing use of welfare guardianship for young people with a learning disability. The use of guardianship changed dramatically since the 2000 Act was put in place. We have seen an increase in applications for adults under 25. In addition to an increasing use of guardianship for younger people, we have seen orders being sought for longer, often indefinite, periods with a larger number of powers being sought and granted. Not infrequently these orders relate to young people with a mild to moderate learning disability. Where, in the early years of the Act applications for young adults were mostly made by local authorities, it is now parents who are the main applicants for guardianship orders.

The issues parents face when their child with a learning disability moves from child to adult health and social care services are quite considerable. Services their child has been receiving from familiar staff are suddenly at risk. It is not always clear what will be put in place and who will step in to continue to provide this care and support. A number of important case conferences and case discussions are held during this transition period. Key decisions have to be made and actions taken by, or on behalf of, the young person that may have a long lasting impact on their health and welfare. Parents understandably may fear a loss of control.

Equally understandable, parents may not trust those in statutory services to exercise the same care and attention, based on a thorough knowledge of their child, which they had been exercising as parents. It is therefore not surprising that many parents seek welfare guardianship as a means to maintain some control and influence over important decisions and actions that have to be taken in respect of their child. While it is understandable that parents seek guardianship orders to give legal authority to their continuing parental role, the law acknowledges that as their child becomes an adult, he or she gains a new legal status with the rights that go along with this status.

Because welfare guardianship removes some of these rights, the law provides a number of safeguards. Central to these safeguards is the role of the local authority supervising officer. Over the years we have found a number of cases where we have been concerned about the quality of local authority supervision. In some cases, the statutory requirement placed upon the local authority to supervise guardians is not being carried out at all.

### What the law says

The local authority functions under the Act that are relevant to this monitoring report are set out in Part 1 and Part 6 of the 2000 Act. Essentially, the main general responsibilities are:

- through the Chief Social Work Officer, to act as the welfare guardian in respect of an adult where necessary
- to supervise the private welfare guardian in the exercise of their functions
- to make an application for welfare (and financial) guardianship where necessary and appropriate
- to provide mental health officer reports to accompany application on the general appropriateness of the order and the suitability of the proposed guardian (except where that is the Chief Social Work Officer)
- to visit the adult and guardian within the first 3 months of an order being granted and at no less than 6 monthly intervals thereafter (as set out in Regulations SSI 2005 No. 630)
- Regulations require non-local authority welfare guardians to provide certain reports and other information to the local authority. These are any report or specific piece of information about the personal welfare of the adult, or the exercise by the guardian of their personal welfare functions.

The law makes certain requirements of the welfare guardian which apply to both local authority and private welfare guardians. One of the basic duties is for the guardian to make a record of when and how welfare powers have been exercised.

### The Codes of Practice to the Act

The *Code of Practice for Local Authorities Exercising Functions under the 2000 Act* and the *Revised Code of Practice for persons authorised under intervention and guardianship orders* outline the expected standards of practice for private welfare guardians and local authority officers. While the Codes of Practice are guidance and not legally binding, it is pointed out that “failure to comply with them may be one of the factors considered by the Public Guardian, the Mental Welfare Commission, the local authority or the sheriff in considering matters such as the continuing suitability of the person to exercise those functions, in investigating circumstances in which the adult appears to be at risk or in an application before the court.”

It is essential to read the Codes of Practice to understand what is involved, both in the local authority’s role in supervising guardianship orders as well as the guardian’s roles and responsibilities. The local authority code states that **“it should be the responsibility of the Chief Social Work Officer of each local authority to ensure that the Code of Practice is implemented by all staff for whom it is relevant.”**

Some of the fundamental points made in the Codes of Practice which have relevance to this monitoring exercise are provided on our website [www.mwscot.org.uk/newpublications/monitoring\\_reports](http://www.mwscot.org.uk/newpublications/monitoring_reports). You will have a greater appreciation of the findings and recommendations of this report if you are familiar with the relevant parts of the Codes of Practice.

### What we wanted to find out about young adults on welfare guardianship orders

Through a more detailed analysis of the use of welfare guardianship for young adults we wanted to find out:

- what information private guardians are given about the role at the stage of applying to be guardians;
- how aware private guardians are of their statutory responsibilities;
- the views of private guardians about the involvement of social work in supporting them to exercise their powers;
- the preparation and support given to supervising officers and delegated guardians to enable them to act in this capacity;
- the systems in place in different authorities for appointment of supervisors/responsible officers;
- the governance arrangements in local authorities to ensure that supervisors and responsible officers are fulfilling the statutory requirement to visit the guardian and/or adult;

- the views of guardians, both private and local authority, and those of local authority supervising officers on what impact they feel they have had; and
- the methods and standards of recording contacts/visits by local authority supervisors and responsible officers.

### How we gathered the information for this report

We analysed the information we held about all adults under 25 who were on welfare guardianship in November 2008 and who had been so for at least one year prior to that.

From this initial work we found that:

- There were 319 people who were aged 25 or under when their guardianship order was made. 89% had a diagnosis of learning disability. (One third of those 50 young adults whose cases we sampled for further scrutiny were classified as having a mild to moderate level of learning disability.)
- 79% had private guardians.
- 72% of orders were granted for an indefinite period. While this essentially is the same as the average of indefinite orders for all adults on welfare guardianship (older people with dementia account for nearly 60% of all guardianship cases), indefinite orders for those under 25 could be regarded as a much greater intrusion, in respect of their civil liberties, because there is no automatic judicial review of orders granted.

- Most orders granted include an array of powers covering all areas of activity/ decision-making relating to the adult's welfare. This is more the case than with orders for those between 25 and 65 and is more similar to what is observed in respect of adults on guardianship because of dementia.
- Adults under 25 were more likely to have powers granted on their behalf in nine of the twelve categories of powers granted which we record than was the case with those over 25.
- The median age at which guardianship started was 18 years. In contrast, local authority guardianship cases were, in the majority, granted for less than 5 years and the median age for the start of the order is 20 years.

We took a representative sample of 50 guardianship cases, where the person was under 25 years old when the order was granted. The sample comprised 39 private guardianship cases and 11 local authority orders. The sampling process was designed to include a range of local authorities and to reflect the relative number of guardianship orders in existence. 19 of Scotland's 32 local authorities were represented in the study.

The sample was also designed to ensure that it included a range of cases, taking account of the following features:

- how long ago the order had commenced (in the range 1-5 years);
- the length of time for which the order was granted;

- whether a private or local authority guardian was appointed;
- whether the person was diagnosed as having solely a learning disability or not;
- the age of the person when guardianship was granted;
- the incidence of guardianship in the local authority concerned.

Private guardians of each individual were interviewed by telephone using a structured questionnaire. Supervising officers and the local authority officer responsible for carrying out the functions and duties of guardian in cases where the chief social work officer had been appointed guardian (the responsible officer) were also interviewed. We asked supervising officers and responsible officers to forward notes of their contacts and visits to us in advance of the interview for the period 1 December 2007 to 30 November 2008. A total of 47 mental health officer (MHO) reports which accompanied the original guardianship application were scrutinised. Assessment criteria for MHO reports that accompanied the applications were used to assess the quality of completed reports. Managers of mental health services completed a questionnaire relating to systems in place for management and support of workers undertaking supervisory responsibilities.

Detailed information about the research sample and copies of the questionnaires can be accessed from our website [www.mwscot.org.uk/newpublications/monitoring\\_reports](http://www.mwscot.org.uk/newpublications/monitoring_reports).

## Research findings

### 1. What private guardians told us about their experiences

A total of 38 private guardians agreed to be interviewed by telephone. One private guardian could not be contacted during the period in which the study was completed. The following outlines what they told us about their experiences.

#### • Reasons for making the application

Nearly a fifth of respondents stated that they sought guardianship as they did not have confidence in social work decisions having had a negative experience of social work previously.

The overwhelming majority told us they had sought welfare guardianship powers as they wanted more of a say in decisions about their child's future care. They felt as the parent that they knew the person best and were better placed than anyone else to make decisions in relation to the person's welfare.

The decision to apply was often made at a time when significant changes were taking place in the person's life e.g. they were moving to their own tenancy, or they were transferring from child to adult services. Private guardians stated that by having the power and authority of guardianship, they felt their profile in meetings would be higher and that they would be listened to more.

45% of those interviewed indicated that during discussion with their lawyer about financial guardianship they were advised to seek welfare guardianship at the same time.

Other reasons included having to make medical decisions when the individual reached the age of sixteen and having legal authority to raise an action against a local authority on behalf of their child due to the lack of provision of appropriate services

In 8% of cases parents felt that they had no choice but to apply for guardianship having been informed that specific decisions could not be made without it e.g. medical decisions.

- [Transition to adult services](#)

We asked guardians about their experience of their child moving from child to adult health and social services. They expressed a predominantly negative view with regard to social work input in this process. They cited a lack of suitable, accessible resources for the young person as one of the main reasons for their dissatisfaction. Over two-thirds of respondents indicated that the involvement by the social worker in the process of their child moving from children to adult services was unhelpful, while a third indicated that the involvement by the social worker was a positive one.

One guardian stated that, “the last ten months of the transition period have been terrible with having to fight all the time with social work to get the necessary services.” One reported that it was a “nightmare situation from start to finish” due to having no allocated worker and feeling alone in planning for the adult’s future. Another guardian commented “It was a drastic situation. There were always waiting lists for services that were needed. Looking back it was a long struggle.” Other views were

that it took too long to identify a suitable residential resource, that the process was too rushed after a protracted period of time waiting for services and there was a lack of coordination. As one guardian pointed out “There wasn’t a key person pulling it all together. And everything was so slow in being set up. For us (as guardians) it felt like a black hole.”

Of those who commented on the value of social work involvement at that time, identifying suitable resources and facilitating the guardian’s participation in choosing them, was seen as crucial in reducing the anxiety felt by guardians. Guardians also felt supported when the social worker argued for funding of services that were appropriate on occasions when the social work department was unwilling to fund them due to budgetary constraints.

- [Sources of information about welfare guardianship](#)

Over half of those interviewed said they received information from their lawyer about the guardian’s role when the application was being processed. The information was provided during meetings with the lawyer and was considered to be helpful in assisting guardians to understand what was involved. One respondent received a list from Enable of lawyers specialising in processing guardianship applications. She was very positive about the lawyer’s communication with her about the responsibilities of a guardian.

Over a third reported that information about their role had been sent from the Office of the Public Guardian. It was unclear from the responses whether this included, for those where the application was a joint financial and welfare one, information on their duties as welfare guardians. A small number stated that the information they received was too vague and others that it was complicated to read.

Nearly a quarter of the private guardians did not find the lawyer involved helpful due to inexperience or lack of knowledge of the legislation. One respondent reported that she had difficulty in finding a lawyer who was prepared to become involved as the applicant required to be funded through Legal Aid.

Three guardians received information from seminars that they attended.

Three respondents said they had used the internet to access information about guardianship.

Two guardians cited the source of information about their remit was their social worker and three guardians were given information about their responsibilities when visited by MHOs to complete the report as part of the application.

- [Information provided about supervision arrangements](#)

Half of the private guardians interviewed had been informed of supervisory arrangements at the point of the application and most had been informed during the MHO's visit to complete the report. Care manager, lawyers and literature were other sources mentioned. However, fewer than half those interviewed

understood 'mostly' the role of the supervising officer: Over a fifth had 'no understanding' of the role of the supervisory officer.

Most guardians said they were aware of who their supervising officer was and how to contact them, however, this included those who had to be informed by the interviewer who the supervising officer was. Almost a quarter were not sure when asked, but thought it might be the social worker.

Six guardians did not know who the supervising officer was, or were unfamiliar with the person named by the interviewer as their supervising officer. Two people did not know how to contact the supervising officer, even when advised by the interviewer of their name.

- [Contact with the supervising officer and social work involvement](#)

A third of private guardians had met with the supervisor in 'the last month'. However over a quarter had not met with their supervisor within the last six months – as required by the regulations. Of this group the length of time since last contact varied from '6-9 months ago' to 'three years ago'.

Most private guardians were satisfied with the level of contact they had with their supervisor.

For the small number of guardians who felt that the level of contact was not at a satisfactory level, one stated that they had no contact for nearly a year. Another guardian complained that they had to contact the officer to arrange visits. The others were unhappy with the services the adult was receiving and felt that social work should

have more contact. Of those who felt that the contacts were excessive, guardians did not value visits when the situation was settled and, in their view, they were undertaking their duties in a responsible manner.

The majority of respondents were satisfied with the general level of social work input. Guardians who commented positively on the input highlighted practical assistance and support as being particularly valuable to them and focused primarily on the care management tasks of the local authority supervising officer. This included providing assistance in identifying appropriate resources e.g. residential, respite and day care and applying for relevant benefits.

Of those who commented specifically on the input of the supervisor in reviewing guardianship arrangements, they found it helpful to receive confirmation that they were exercising their powers appropriately. In one case where the supervisor was not the care manager, the guardian was of the view that the supervisor was better placed to monitor her than the care manager. The supervising officer was considered to be more detached than the care manager and could therefore be more objective in reviewing guardianship arrangements. In another case the guardian felt that the worker having a dual role “causes confusion and they can’t be objective as they work for social work”.

Guardians who did not find their input helpful cited a variety of reasons for this. They complained that when they asked for specific services, social work refused to provide them due to budgetary constraints. Others did not agree with the need to be monitored, with

one arguing that “it depersonalises the relationship we have with our daughter”.

Inaccurate information being given, failure to communicate with guardians about tasks the supervisors had agreed to carry out and different workers attending reviews with no knowledge of the person were other reasons given for finding the supervisor’s input unhelpful.

#### • Delegation of private guardianship powers

In our experience, guardians often are not aware that they can delegate powers to others such as care staff. When we asked about this:

- 66% said they had not delegated any powers;
- 26% said they had delegated powers;
- 7% said they were not sure.

Where delegated powers were in place, these were given to care staff in residential, respite, day care resources and staff providing care in the person’s home. Decisions around diet, what to wear and medication were given as examples of the kind of decisions being made by others.

Of those who delegated powers, only three guardians reported formally delegating these powers to others. Examples were given of how this was recorded. These included mention in review minutes, medical notes and the social work file.

### • Recording the use of powers

Only one of the private guardians interviewed was aware of their statutory duty to keep records of what powers they were exercising. Guardians often saw guardianship as an extension of the parental, one viewed the requirement to keep records as too formal. Copies of minutes of reviews and care planning meetings were retained and considered by them to be sufficient evidence of record keeping.

Two-thirds of those interviewed said that they did not keep a record of what actions they take as guardians. Of the remainder, all but one kept a record but were not aware of the statutory requirement to do so.

Of those who did keep their own records, a variety of responses were given to the question of how they recorded their actions. These included keeping a diary/communications book in which staff supporting the person daily at home would write in alongside the recording of the guardian. Some kept a notebook of hospital appointments and phone calls that related to the exercising of powers.

Others saw the retention of minutes of meetings as a form of recording. Recording by this group was not undertaken in order to meet statutory requirements but organized by either the guardian or support staff for other reasons. This group was unaware of the need to keep records.

### • The value of guardianship

We asked private guardians for their views on the value of guardianship:

- 60% were of the view that it had been useful.

- 32% expressed the view that it had made little or no difference.
- 8% indicated that its value had yet to be tested as they had not had to exercise any of the powers.

Of the larger group who believed guardianship had been useful, they indicated that it gave them the authority to make day to day decisions about the person's care. It made them more confident to challenge decisions they disagreed with and they felt that they were listened to more by professionals. One guardian said that they were now more involved in decision making and not just consulted. 'We have a proper say now that we are guardians.' Others spoke about specific services that having the powers had allowed them to obtain, e.g. day services, support staff, and leisure activities to enhance the persons quality of life.

Lack of influence in choice of services was one of the reasons cited for welfare guardianship orders having no particular value. One guardian stated, 'Having welfare guardianship has been nothing but hassle and we [as joint guardians] have found that there have been no real benefits'. In this case, the guardians thought that having the authority to decide a place of residence would allow them to choose the accommodation. This did not happen due to a lack of suitable places. Similarly, one guardian commented that she was having difficulty in recruiting suitable support staff to provide day care and said guardianship was not helping with this problem. Others felt that they continued to care for their relative in the same way that they had before and guardianship had made no difference to that. However, everyone was

clear that they had taken the right steps in applying for welfare guardianship and felt more secure knowing it was in place and that it might be needed in the future.

- **Guardians' contact with the Mental Welfare Commission**

In 2007/08 the Commission scrutinised nearly 1300 guardianship cases and visited over 400 people on guardianship. We asked private guardians about their contact with the Commission. Visits by the Commission to adults on guardianship orders were valued more than telephone conversations by those whom we contacted. Guardians appreciated the role the Commission played in overseeing that they were exercising their powers appropriately and receiving confirmation of this on the visit.

- 57% said that they have had contact with Mental Welfare Commission.
- 30% reported that they had had no contact from the Commission.
- 13% said that they were not sure whether they had had contact.

Four of the private guardians who had telephone contact from the Commission did not find the Commission helpful. In two of these cases the guardians were in disagreement with the social work department regarding provision of services to the adult and felt that the Commission's intervention had not resolved their issues. Of the other two, one rang for advice regarding a custody/access dispute and another complained that the Commission refused to provide to the guardian information about an investigation the Commission was involved in concerning the adult.

A very small number commented on the written information received from the Commission, although were vague about the detail of it. Some found it helpful to know from the written information they received, that the Commission could be contacted if they had particular queries or concerns.

## **2. What social workers told us about their experiences**

A total of 29 supervising officers and 11 responsible officers carrying out the role of guardian on behalf of the chief social work officer were interviewed. The job titles of those interviewed were as follows:

- social workers (32);
- senior practitioners (4);
- senior social workers (2);
- team leader (1);
- practice team manager (1).

The workers' experience of undertaking guardianship responsibilities varied from up to one year to more than three years. However, most of those interviewed had more than three years experience.

- **Preparation and experience for undertaking the role**

Two-thirds of those interviewed had over two years experience of guardianship responsibilities. Respondents specified training or briefings as the main means of preparing them for the role. Written guidance, discussion with managers and other MHOs were mentioned as other types of assistance that helped them to undertake their duties. 10% of those interviewed reported that they

received no preparation. The responses are broken down as follows:

- 39% indicated that they had had input on the Act on their MHO training;
- 34% had attended briefings /training on AWI legislation;
- 27% received written guidance/procedures to assist them in undertaking the role;
- 18% had discussion with their manager about the role;
- 12% had informal discussions with MHO colleagues about the role;
- 10% received no preparation for taking on the role;
- 5% had obtained information on the internet.

Most workers told us that input on the 2000 Act in the MHO training course did not specifically address the role of supervising officer/responsible officer. Specific training varied from half a day to two days in length. Informal support from MHO colleagues, or a specialist MHO, team was valued. One supervising officer had looked at how the role had been undertaken in another case that was similar and this had been helpful. In two cases the social worker had worked closely with a responsible officer in a guardianship case for two years before taking on the role and felt confident acting in that capacity thereafter. One worker stated that they had received no specific support and “it felt like it was an ‘add-on’ to our main workload”. Another supervising officer had been approached directly by the MHO to take the role on in addition to the care manager role.

This had been agreed following discussion with their manager, but the supervisor indicated that no guidance on how to undertake this role was given.

- **Support in place to assist workers to undertake the role**

We asked local authority supervising and responsible officers about the nature of the support they received in carrying out their functions under the act. These are the responses:

- all referred to supervision as a forum in which to discuss their role;
- 54% referred to informal support from MHO colleagues or to MHOs in a specialist team as another source of support;
- 15% referred to MHO meetings as also providing an opportunity to debate issues raised from acting in this capacity.

While supervision was identified by all the respondents as a forum in which to discuss their role, a range of other sources of support were identified including informal support from MHO colleagues and MHO meetings. The latter were considered a valued resource for raising issues about the role of supervising and responsible officers. None of the respondents referred to the updated *Code of Practice for Local Authorities Exercising Functions under the Act*. 10 respondents reported having a copy of the Code of Practice. Most of the others reported they knew how to access it. Four of those who responded, however, neither had a copy of the Code of Practice nor knew how to access one.

A small number indicated that supervision alone provided an inadequate level of support. More responsible officers than supervising officers cited receiving their support from a variety of sources. 18% of responsible officers and 43% of supervising officers depended solely on supervision by a line manager for support.

One worker indicated that all pro formas used for reviews are sent to the line manager to be countersigned. The content of the documentation was often used in supervision to discuss issues arising from the role. We would view this as sound and helpful governance. Another worker raised concern that due to lack of administrative support for recording the extant private guardianship cases which the council were required to supervise, workers were not aware of the service user's legal status prior to taking on a case.

#### • Frequency of visits

Regulations under the 2000 Act require that local authorities must arrange for every adult subject to welfare guardianship and his or her guardian to be visited within three months of the order being granted and subsequently at intervals not exceeding six months. All of the responsible officers stated that they were meeting the statutory requirements for visits to the adult. Most of the supervising officers stated that they fulfilled the statutory requirement for visits to the guardian and to the adult. The responses were:

- 90% of those interviewed said they were visiting the adult/guardian within the statutory time scales;

- 7% said they were not visiting the adult within the timescales required by law;
- 3% did not know of the statutory requirements for visiting.

However, from analysis of the sets of notes submitted by social work staff, the statutory visits recorded by social work staff are significantly lower than that which was stated during interviews.

Of the responsible officers, 27% visited weekly in their care manager role. Of this group, two did not know what the law specified regarding frequency of contact and, when informed, said that they were meeting the statutory requirements. A small number said that they attended the person's six monthly care review and included this as a guardianship contact, whether or not the adult was present.

Two supervising officers stated that they did not meet the statutory requirements for minimum frequency of visits. One indicated that she liaised closely with the care manager about the person's progress and spoke by telephone to the guardian.

One supervising officer expressed concerns about the standard of supervision when the supervising officer is not the care manager. Their view was that as care manager you were likely to be more involved in the case and could monitor progress and review how the guardian was exercising their powers more thoroughly than if the contact was irregular.

- **Delegation of statutory duties and powers**

Supervising officers were much less likely to delegate statutory visiting responsibilities to someone else compared to responsible officers. A higher percentage of responsible officers (36%) than supervising officers (17%) reported that the care management tasks were undertaken by another worker. All reported that they liaised with the care manager to whom they all had delegated care management tasks about reviews.

A greater percentage (27%) of responsible officers had delegated statutory responsibilities to someone else compared to 3% of supervising officers. This is the opposite of what we would have anticipated, as the responsibility to carry out the functions of guardian on behalf of the Chief Social Work Officer had already been delegated to that person. There is the potential that the role of responsible officer becomes less distinct, unless clear accountability is formally established and actions taken on behalf of the Chief Social Work Officer properly recorded.

Where responsible officers reported that they had delegated some of their statutory responsibilities, in three-quarters of the cases this was to support staff caring for the person in a residential unit. In such circumstances the responsibilities of support staff were agreed as part of the care planning undertaken prior to the person moving to residential care. These were subsequently reviewed at formal review meetings.

We did not explore in detail the nature of the information given to those to whom these functions were delegated to ensure they were aware of their statutory functions and recording processes. However, all supervising and responsible officers reported regular contact with staff about use of powers. In half of the cases, the responsible officer reported that the care manager had also been given statutory responsibilities and there was regular contact with the care manager over the use of powers.

In all cases where the Chief Social Work Officer was appointed guardian, any delegation of responsibility by the responsible officer appears to have been carried out on an informal basis.

- **Impact of involvement**

A positive outcome with the adult/guardian was the most common response given by social work staff to the question of what effect the worker's involvement had delivered for the adult/guardian. A large number of respondents viewed the identification of appropriate resources and assisting guardians with obtaining funding to access care as extremely important to their care management role. This included identifying suitable day and respite care facilities and accommodation to promote independence. The importance of responding to the changing needs of the person was identified by a number of people.

Four of the workers interviewed felt they played a significant role in managing to resolve conflict between the service provider and guardian. One worker referred to clarifying the role of support staff with the manager of the service to improve communication and develop a better relationship between them and the guardian. Another worked at building bridges between the guardian and service provider, when the guardian had raised concerns about the standard of care being provided to the adult.

Supervising officers referred to their role in overseeing how the guardian was exercising their powers and assisting them in understanding their role. One supervising officer was concerned about the standard of supervision they were able to provide and felt that the care manager had greater involvement and, in their view, was better placed to monitor closely the use of powers by the guardian.

A small number had difficulty identifying any impact as they considered the situation was very settled and their involvement was at a very low level. One supervising officer struggled to see any impact they had made. "It is difficult to know. They can contact me if necessary. They are very competent guardians and this is an extension of the parental role."

A large number of responsible officers discussed their involvement as positive, enabling them to use powers that provided protection to a vulnerable individual whilst at the same time promoting the individual's independence. One worker discussed how the input enabled the person to be moved "from a residence that is a very restrictive to one that recognises the improvement in his cognitive abilities." Another stated that "it keeps him safe and allows decisions to be made that promote his independence and minimise vulnerability to himself and others."

### **3. Analysis of Mental Health Officer reports and notes of supervision visits**

As part of our research we looked at the standards of MHO report writing and the quality of recording of supervisory visits/ contacts. A total of 47 reports were scrutinised of which 36 reports were completed for private guardianship applications and the remainder for local authority applications. Only one MHO did not support a private guardianship application in their report. We assessed each report against a number of criteria and noted any additional comments relevant for the purposes of the study.

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### Private Guardian applications

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MHO reports	Yes	No	Not applicable
Has the author suggested any powers are unnecessary?	1	35	
Has the author suggested that the order be approved for a shorter/longer (chose one) length of time than that sought?	4	31	1
Did the author perceive any likely conflict of interest between the guardian and the adult?	1	34	1
Did the author perceive any undue concentration of power felt likely to arise in the proposed guardian over the adult?	1	34	1
Did the author perceive any adverse affects the appointment of the proposed guardian would have on the interests of the adult?	1	35	
Did the author feel the order was appropriate?		35	1
Did the author feel the guardian was suitable?	35		1

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### Local authority applications

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MHO reports	Yes	No	Not clear
Has the author applied the principles in considering the appropriateness of the order sought?	10	1	
Has the author described any alternatives that have been considered and reasons why benefit cannot be achieved by any other means?	6	4	1
Has the author suggested that the order be approved for a specific length of time?	2	9	

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- MHO reports for private guardianship applications

Whilst all the reports supported all the powers sought, very few commented on powers individually, why they were necessary and in what way the person would benefit from them. We saw little exploration of the need for specific powers that would demonstrate practice consistent with the principles of the Act.

Most of the reports provide social background information, but the overall standard of reporting on social circumstances is poor. In some cases there is no information provided and in others there is sketchy detail. In several reports the MHO makes reference to the person transferring from child to adult services and the need for decision making powers, but offers no information on the person's circumstances to make this statement meaningful.

Most reports do not address the question of what alternatives were considered and deemed to be inappropriate. A number refer to informal arrangements being used up until the point of applying for guardianship, but do not explain why formal arrangements are now necessary.

We found a lack of detail provided regarding how the person's mental disorder impacts on their capacity in terms of their day to day functioning and how this relates to the need for safeguards to enable decisions to be made, or actions to be taken, on their behalf.

Most reports demonstrate that a lot of effort is made to ascertain the views of the person and, where unable to do so, provide

evidence of what attempts have been made to try and obtain these. Similarly, a great deal of effort is invested in establishing the views of others with an interest in the person and detailing these in the report.

- MHO reports for local authority guardianship applications

In contrast to those provided for private applications, the majority of MHO reports for local authority applications outline alternatives and discuss why these interventions would be inappropriate. A number of reports, however, provide no evidence of what alternatives have been considered.

Some of the reports argue very clearly as to why guardianship would benefit the individual. They specify the risks to the person and /or others and the level and type of protection provided by each of the powers being proposed.

In order to understand the reasons for applying for guardianship, it is important to consider the social factors that influence decisions to seek protective measures in relation to vulnerable individuals. A number of reports give very detailed social background information.

As is the case for private guardianship applications, the majority of reports indicate that the MHO has made a great deal of effort to ascertain the views of both the adult and others with an interest in the person. In situations where they were unable to ascertain views, there was generally a clear explanation on efforts that had been made to obtain these views.

Overall the reports for local authority guardianship applications were considered of a higher standard than those completed for private applications. Generally they provided more detailed social background information and a more reasoned argument for why the order was needed. In the reports that considered alternatives, there was a much more in-depth exploration of these and why they were not considered an appropriate intervention.

- **Social work notes covering the exercise of statutory functions**

A total of 40 copies of notes covering the exercise of statutory functions as either supervising or responsible officer were requested. Despite reminders being sent out when notes were not received, only 32 sets of notes were submitted. Of those received, we did not include two sets of notes in the survey as they related to visits and contacts made over a period outwith the dates requested. Of the 30 sets of notes included, 19 related to private cases and 11 to local authority cases.

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#### Social work notes

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	Yes	No	Unclear
Supervising officer/responsible officer has recorded whether or not powers granted are being used in the adult's interests.	20	5	5
Where changes in person's circumstances are recorded, an assessment is given of the impact of these changes.	18	2	10
Supervising/responsible officer has commented on whether the order continues to be necessary.	14	10	6

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- Visits to guardians and adults on guardianship

Of the 19 private cases, 14 indicated that at least the required two visits had been made to the guardian in the 12 month period specified, however, in one case both visits were made in December 2007. The remaining five recorded a single visit in the period. Only 6 of the notes submitted recorded any visits to the person on guardianship.

The local authority cases involved only visits to the person on guardianship. Eight of the eleven sets of notes recorded at least the required two visits having been made in the period. One worker recorded a single visit in the period. Two reported no visits. In a quarter of the cases, in which the Chief Social Work Officer had been appointed welfare guardian, the relevant notes relating to the management of the guardianship could not be produced by social work staff. In a further quarter of the cases there was no evidence from the case records that the minimum statutory visiting requirements were being met. In an additional fifth of these cases there was no record of any statutory visit to the adult on guardianship being undertaken. This means that in nearly three-quarters of those cases in which the Chief Social Work Officer was appointed guardian, there was no record made available to us of the statutory visiting requirements being met by the responsible officer on behalf of the Chief Social Work Officer. This finding causes significant concern about governance arrangements in place regarding actions taken on behalf of the Chief Social Work Officer.

Case notes recorded the minimum requirement for statutory visits by the local authority supervising officer to the adult on welfare guardianship where there was a private guardian in under a third of the cases. In contrast, statutory visits to private guardians were recorded in 68% of the cases. Half of the notes received did not specifically state how the statutory functions of local authority officers were being carried out. In these cases the notes related solely to the care management role, detailing the worker's involvement in undertaking social work tasks.

Eight copies of care review meeting minutes we reviewed made little or no explicit reference to use of guardianship powers. Pro formas are used by some local authorities to record guardianship interventions, where these are in place we found they provided much clearer information for local authorities to review how they are carrying out their statutory functions under guardianship – making reference to use of powers, impact of changes in circumstances and whether the order is still necessary.

In general, there was a lack of clear information indicating whether supervisory contact/visits to the adult in relation to private guardianship cases were, in fact, undertaken. Some of the case notes distinguish between the care management and guardianship roles. In most cases, however, it was difficult to extract this information from the case notes. Although the quality of the recording was very variable, where a template is used for recording, the remit of the worker in monitoring and reviewing guardianship

is much easier to identify. The pro forma used in West Lothian for reviewing guardianship was considered as particularly helpful as a means of addressing key areas including assessment of use of powers, need for existing, additional powers, evidence of principles of the Act being observed and actions required, with the names of persons responsible for carrying out actions with completion dates.

In one set of notes, the supervising officer records a home visit to the adult and private guardians. Notes refer to the need for renewal of the order for an indefinite period without evidence of the need, or explanation of the rationale behind this proposal. In another, the private guardian refers to the need for renewal of the order in a care review meeting but the notes do not record what, if any, discussion took place as to why this was necessary.

- [Information provided to care staff on welfare guardianship powers](#)

When an adult on welfare guardianship is resident in a care home, most authorities provide the care home with a copy of the order and information on the powers. This only seems to happen where the local authority has made the application. This information may also include a copy of the care plan. Reference was also made to the issuing of a copy of the Mental Welfare Commission guidance “Working with the Adults with Incapacity Act in Care Homes”.

Some authorities saw it as the responsibility of the private guardian to provide information to the care home and were advised to do this by the care manager/MHO. However, respondents expressed concerns that this did not always happen. We believe it is essential that care staff are aware of the legal status of their residents and should know what powers have been granted under guardianship. We would expect that, when the powers of the guardian are to be delegated, there is a meeting to formally decide which of these powers are to be delegated, to whom they are to be delegated and the circumstances in which they are to be delegated. When the guardian should be contacted for consultation or notification should also be detailed. Local authority supervising officers should offer to assist private guardians in this process where necessary.

#### 4. Management role in guardianship process

A range of mechanisms are in place to ensure that responsible officers and supervising officers are doing what is required in accordance with the law and the Code of Practice. These include formal supervision, adherence to local procedures, use of templates, briefings/training and informal support from MHO staff.

In some authorities the supervising officer/responsible officer role is undertaken only by an MHO. In others this is undertaken by the care manager and training is provided to support them in undertaking this responsibility.

Templates are used by eight local authorities to review private guardianship cases. Completed forms are countersigned by private guardians and by the line manager of the supervisor in Aberdeenshire. In Angus a pro forma is used by seniors supervising the responsible officer.

#### • Recording systems

In all authorities supervising officers and responsible officers are expected to keep a record of contact visits with the adult and the guardian. Most use the department's case recording system to detail contacts. As indicated above, some use templates to record contacts/visits.

None of the authorities has a specific template for supervising officers/responsible officers to summarise their involvement when transferring the case to another supervising officer/responsible officer. Normal procedures for case transfer were said to be used.

#### • Appointment of supervising officers and responsible officers

In most authorities team leaders are responsible for appointing workers as part of the caseload allocation processes. In some authorities the role of supervising officer is undertaken by the MHO who completed the MHO report for the application. In others, it is combined with the care management role. Some authorities delegate the role of responsible officer to the care manager involved. In others, MHOs are appointed to undertake this function.

## Our key findings

- If you are a young person with a learning disability on guardianship your guardian is most likely to be your parent and your guardianship is likely to have been granted for an indefinite period.
- Parents are most likely to seek welfare guardianship powers at the point of transition from child to adult social services. For many, this is to maintain some control and input to the care and treatment their child receives. Almost a fifth of all private guardianship applicants said they did not have confidence in social work decision-making.
- Two-thirds of parents find welfare guardianship useful; a third felt it makes little or no difference to their ability to influence decisions.
- Many private guardians are not aware of their statutory responsibilities. Only one guardian we spoke to was aware of their duty to keep records of how they had exercised their powers under the Act.
- Private guardians do not seem to be getting the information and support they need to properly fulfil their role. Social workers are a key source of information and support yet only two private guardians reported receiving information about welfare guardianship from their social worker. A quarter of private guardians reported that they had not seen their social work supervisor within the last 6 months. The majority of these guardians, however, said they were satisfied with the general level of social work input.
- A third of all private guardians said they had not received information from the Mental Welfare Commission regarding our safeguarding role.
- Many social work supervising officers seem to be unaware of their duty to visit both the guardian and the adult on guardianship.
- Mental Health Officer reports that relate to local authority guardianship applications are likely to be of a much higher quality than those prepared in relation to private applications. Local authority applications are likely to be accompanied by information that considers the application in light of the principles of incapacity law; alternative courses of action will have been considered/ tried, the views of the adult and other significant persons will have been sought, social background information will be more detailed and there is more likely to be comment on the powers sought and the benefits of these to the individual.
- Local authority supervising officers and responsible officers all referred to supervision as the main forum in which to discuss their role. The majority of social workers referred to informal support from MHO colleagues or to MHOs in specialist teams as sources of support. The Code of Practice was not cited by any social workers as being used as a guide in assisting them in carrying out their duties. A tenth of those interviewed said they received no preparation for their role as supervising or responsible officer. Most MHOs said their specialist training does not properly address supervisory and responsible officer responsibilities.

- Records of the exercising of powers are not adequately kept for young people on guardianship. Only one private guardian kept records. A review of social work notes showed that, in over 70% of cases where the Chief Social Worker was guardian, there were no records of statutory visits being made or of the powers being carried out on behalf of the Chief Social Work Officer. Where the powers of the guardian are delegated to another person this is not formally recorded.
- Pro formas are used by some local authorities and these can provide a useful summary of how guardianship is operating for an individual and how statutory requirements have been met. The pro forma used by West Lothian Council is particularly helpful. It records the use of powers, the need for additional powers, evidence of how the principles of the Act are being observed, the names of those responsible for specific actions and completion dates.
- Care homes are much less likely to receive information about welfare guardianship arrangements and powers related to an individual in their care if that person has a private guardian than where Chief Social Work Officer has been appointed guardian. Where supervising officers do not supply care providers with the adequate information, individuals in care homes are more at risk of having their rights breached.

## Our key recommendations

### Chief Social Work Officers should:

1. Review the findings of this report and audit governance arrangements in respect of the statutory functions of responsible officers and supervising officers under the Adults with Incapacity (Scotland) Act 2000. This audit should examine:
  - supervisory arrangements for responsible and supervising officers;
  - recording arrangements, including use of templates/pro formas;
  - information provided to private guardians outlining their statutory responsibilities, what the local authority supervisor will expect of them and what they can expect from the local authority supervisor;
  - procedures for delegating statutory powers and duties to other parties;
  - provision of information to care staff on legal status of adults placed in care, including the powers granted under the order, the names and contact details of private guardians, responsible officers and supervising officers and when they should be contacted;
  - quality assurance procedures for MHO reports prepared as part of application for welfare guardianship;
  - training for all staff undertaking statutory duties under the Act;
  - access to relevant Codes of Practice under the 2000 Act for all staff undertaking statutory duties and functions under the Act.

2. Review the process of transition of young people with learning disability to adult services with a focus on addressing the legal status of young people as they turn 16 and any action that may need to be taken, either by family or the local authority, to underpin key aspects of future care plans. The involvement of MHOs in providing advice and assistance in this respect should be built into the process.

### The Social Work Inspection Agency should:

Review the findings of this report to determine its potential relevance to future inspections/regulatory processes.

### Programme leaders for MHO training courses should:

Ensure that course content includes information on the statutory duties and functions of local authority supervising and responsible officers under the Adults with Incapacity (Scotland) Act 2000.

### The Mental Welfare Commission should:

Review its routine provision of information to private guardians to ensure this information is received and its content understood.

### Scottish Ministers should:

Review current provisions in the Adults with Incapacity (Scotland) Act 2000 for judicial review of financial and welfare guardianship orders to ensure compliance with human rights legislation and consistency with approach taken under the Mental Health (Care & Treatment) (Scotland) Act 2003.





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