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CORPORATE REPORT

Contents

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|---|----|
| <u>Our overview of the Use of the Adults with Incapacity (Scotland) Act 2000</u> | 02 |
| <u>Geographic variations in the use of welfare guardianship</u> | 03 |
| <u>Duration of guardianship orders applied for by applicant</u> | 07 |
| <u>Geographic variation in duration of orders and causes of incapacity</u> | 16 |
| <u>Age and diagnosis of people placed on guardianship</u> | 17 |
| <u>Court processing of guardianship applications (Local Authorities and Private Individuals)</u> | 21 |
| <u>Delays in processing guardianship applications</u> | 24 |
| <u>Our visits to adults on guardianship</u> | 25 |
| <u>Adults with Incapacity (Scotland) Act 2000, 1st April 2012 to 31st March 2013, Section 48 (regulated treatments) and Section 50 (disagreements with proxy)</u> | 27 |

Our overview of the Use of the Adults with Incapacity (Scotland) Act 2000

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

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

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

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

- We looked into the use of welfare guardianship under incapacity legislation. The number of new and existing orders continues to rise. What has been most striking in this past year has been the increase in approved local authority applications – up 12% in the past year following a 5% rise the previous year. This followed years where there was no increase in the number of local authority applications. This represents a significant challenge for local authorities in managing the workload of mental health officer services.
- Dundee, Glasgow and East Lothian all had very high increases in the rates of approved orders in 2011/12 and these rates (per hundred thousand) increased even further in these areas in the past year. While the Scottish average for approved welfare guardianship applications stood at 44 per 100,000, these areas showed rates of 79, 77 and 76 respectively.
- There was a further significant reduction in the granting of orders on an indefinite basis – down from 45% in 2011/12 to 35% in the past year. This means that the percentage of orders granted on an indefinite basis has therefore dropped by 36 percentage points (more than halved from 71% to 35%) in three years.
- The granting of orders on an indefinite basis has fallen for both private (50% - 39%) and local authority (31% - 25%) approved applications.
- The percentage of orders granted where the cause of the adult's incapacity was dementia fell to 46%, down from 51% the previous year. Conversely, there was an increase from 37% to 41% of orders where the incapacity was caused by a learning disability. The rise in the number of approved orders in the past year was solely down to the increased use for adults with a learning disability. This is the first year we have seen this.

- Courts dealt with 82% of applications within two months.
- In 18% of those 560 adults we visited, Commission staff had to undertake further casework because of issues picked up in carrying out the visits. These issues were primarily related to the welfare guardian not specifically delegating their powers to carers, the lack of evidence that the local authority had carried out their statutory duty to visit the adult and/or the guardian, the lack of authority to administer medication and no evidence that the continued need for the placement was reviewed by social work. Generally, however, we were satisfied with the care and treatment being provided.

Geographic variations in the use of welfare guardianship

Our interest in this

We have reported over the years the variations in the use of guardianship from one local authority area to another and from one year to the next. Anyone may apply to be a welfare guardian and 74% of applicants are now private individuals. Local authorities have a duty under section 57(2) of the Adults with Incapacity (Scotland) Act 2000 to take forward applications for welfare guardianship wherever necessary, in cases where no-one else is making an application or is likely to do so. While the reasons for differences between local authorities are complex, local authority staff should review this data to help ensure that the Act is being used where necessary in their area, both to safeguard the welfare and property of adults with incapacity and to assist relatives and carers. Local authority managers will also wish to examine trends which might have implications for workload management and planning.

What we found

In 2012/13 there was a further increase of over 9% in the number of welfare guardianship orders granted over the previous year. And while this looks like a substantial decrease from the 16% increase of the previous year, it still represents a workload increase, especially for local authorities but also for medical staff and the courts, as there were an additional 163 applications beyond that processed in 2011/12. For local authorities this represented an increase of 12% over the previous year's local authority applications; this after a 5% increase in 2011/12 over the previous year. The rate of increase in private applications has slowed to 8%. This is the first year that the trend which has been evident since the Act was implemented - the year on year increase in the percentage of applications made privately - has stopped. In 2012/13 local authority applications accounted for 26% of all applications, up from 25% the previous year. The 16% increase in total orders granted in 2011/12 now looks like an aberration, with a return in this past year to the trends in increases seen in the previous 3-4 years. What has been evident, as will be discussed in detail later in this report, is that the growth in the use of welfare guardianship has been almost solely due to the increase in use for adults whose incapacity is related to their learning disability.

The table below shows that the rate of approved orders for 2012/13 per 100,000 population over 16 ranged from 0 in Shetland, 18 in the Scottish Borders and Inverclyde and 23 in the City of Edinburgh, to 79 in Dundee, 77 in Glasgow and 76 in East Lothian. The Scottish average rate was 44 (33 private and 12 local authority).

While there was just over a 9% increase in approved applications across Scotland, there were considerable variations across the country. Five local authority areas saw increases in approved orders of 40% or greater, with the highest increases evident in Clackmannanshire, Midlothian, East Lothian, Renfrewshire and Eilean Siar.

Dundee, Glasgow and East Lothian all had shown very high rates of approved orders in 2011/12 and these rates (per 100,000) increased even further in these areas in the past year. While the Scottish rate for approved welfare guardianship applications stood at 44 per 100,000, these areas showed rates of 79, 77 and 76, respectively, up from 60, 64 and 48 per 100,000 in 2011/12.

Approved orders fell by 32% in Moray, 25% in Aberdeenshire, 23% in the Scottish Borders and, for the second year running, 20% in South Ayrshire.

The above, once again, demonstrates how difficult it must be for local authorities to plan and ensure an adequate mental health officer response when they have to react to such dramatic and unanticipated changes, usually increases, in the number of applications, most of which (74%), are from private applicants.

The variations in approved applications made by local authorities (not counting those authorities with fewer than 10 approved applications) ranged from increases of 48% in South Lanarkshire, 47% in East Lothian and 38% in Renfrewshire, to decreases of 38% in Aberdeenshire and 10% in the City of Edinburgh.

Guardianship orders by local authority area 2012-13

| | Guardianships granted 2012-2013 | | | | | |
|-----------------------|---------------------------------|---------|-----|-------------------------------|---------|-----|
| | Local Authority | Private | All | Local Authority | Private | All |
| | No. | No. | No. | Rate per 100K 16+ Population* | | |
| Aberdeen City | 18 | 37 | 55 | 10 | 20 | 30 |
| Aberdeenshire | 15 | 50 | 65 | 7 | 25 | 32 |
| Angus | 12 | 17 | 29 | 13 | 19 | 32 |
| Argyll and Bute | 6 | 21 | 27 | 8 | 28 | 36 |
| City of Edinburgh | 18 | 79 | 97 | 4 | 19 | 23 |
| Clackmannanshire | 4 | 15 | 19 | 10 | 36 | 46 |
| Dumfries and Galloway | 19 | 27 | 46 | 15 | 22 | 37 |
| Dundee City | 35 | 61 | 96 | 29 | 50 | 79 |
| East Ayrshire | 21 | 27 | 48 | 21 | 27 | 48 |
| East Dunbartonshire | 1 | 31 | 32 | 1 | 36 | 37 |
| East Lothian | 22 | 38 | 60 | 28 | 48 | 76 |
| East Renfrewshire | 6 | 19 | 25 | 8 | 26 | 35 |
| Eilean Siar | | 10 | 10 | 0 | 46 | 46 |
| Falkirk | 15 | 22 | 37 | 12 | 17 | 29 |
| Fife (LA) | 55 | 86 | 141 | 18 | 28 | 47 |
| Glasgow City | 58 | 328 | 386 | 12 | 66 | 77 |
| Highland | 46 | 43 | 89 | 21 | 19 | 40 |
| Inverclyde | 3 | 9 | 12 | 5 | 14 | 18 |
| Midlothian | 6 | 14 | 20 | 9 | 21 | 30 |

| | | | | | | |
|---------------------|-----|------|------|----|----|----|
| Moray | 3 | 18 | 21 | 4 | 25 | 29 |
| North Ayrshire | 7 | 40 | 47 | 6 | 36 | 42 |
| North Lanarkshire | 27 | 109 | 136 | 10 | 41 | 52 |
| Orkney | 3 | 5 | 8 | 18 | 30 | 48 |
| Perth and Kinross | 18 | 44 | 62 | 14 | 35 | 50 |
| Renfrewshire | 11 | 47 | 58 | 8 | 33 | 41 |
| Scottish Borders | 5 | 12 | 17 | 5 | 13 | 18 |
| Shetland* | | | | | | |
| South Ayrshire | 8 | 24 | 32 | 9 | 26 | 34 |
| South Lanarkshire | 37 | 109 | 146 | 14 | 43 | 57 |
| Stirling | 6 | 20 | 26 | 8 | 27 | 35 |
| West Dunbartonshire | 9 | 32 | 41 | 12 | 43 | 55 |
| West Lothian | 9 | 32 | 41 | 7 | 23 | 30 |
| SCOTLAND | 503 | 1426 | 1929 | 12 | 33 | 44 |

- There were no Guardianships recorded for Shetland this year
- *All figures rounded to nearest whole unit

Duration of guardianship orders applied for by applicant

Our interest in this

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

We have raised concerns in previous reports about the high percentage of orders granted on an indefinite basis. Our concern is that the lack of automatic, periodic judicial scrutiny of approved orders puts the onus on the individual or another party with an interest to challenge the order. We do not think this is in keeping with human rights legislation if the adult is deprived of liberty by the order. The graph below shows the percentage of orders by primary cause of incapacity granted on an indefinite basis, broken down into orders granted to local authority and private applicants. Particularly concerning, as we have reported in the past, is the seeking and granting of orders on an indefinite basis for young adults with learning disability. The Scottish Law Commission (SLC) published its "Discussion Paper on Adults with Incapacity" in August 2012. In considering possible changes to existing legislation the SLC maintained that, where powers authorise a deprivation of liberty, they should not be authorised for longer than a year. The Scottish Law Commission is due to publish its report in 2014.

What we found

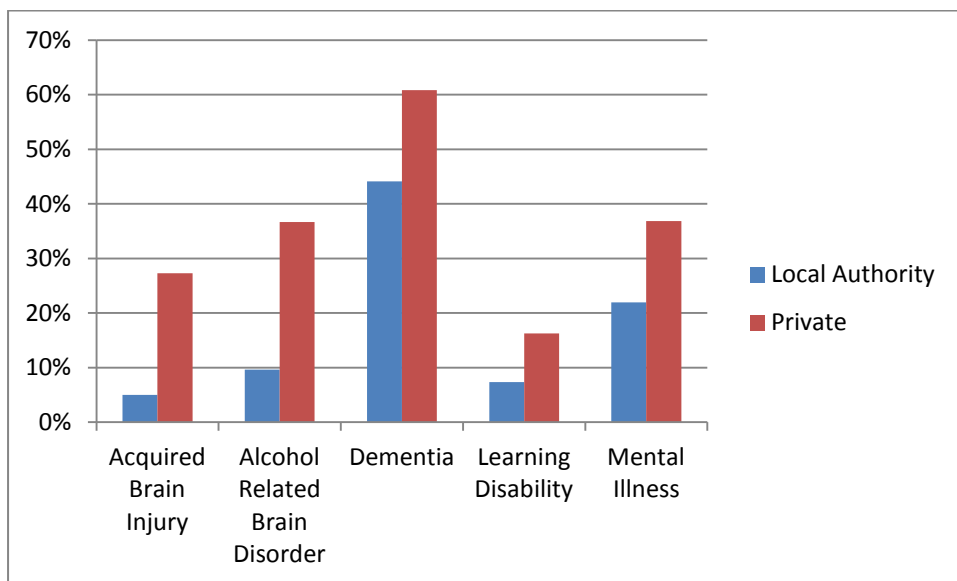
Four years ago we reported that 71% of all Welfare Guardianship orders were granted on an indefinite basis. In 2010/11 this fell to 63%; in 2011/12, to 45%; and in the past year, to 35%. The percentage of indefinite orders has therefore dropped by 36 percentage points over the three years between 2009-10 and 2012-13, a trend we are pleased to note. This is still, however, an area that needs a fundamental change in the law and continued monitoring in the interim.

As of 31/3/2013 there were 4415 adults on indefinite welfare guardianship orders, 453 of whom were under the age of 25 and 1108 under 45 years of age.

Indefinite orders, in general, were much more likely to be granted where there was a private guardian. Thirty nine percent of all orders granted to private guardians were

granted on an indefinite basis; for local authorities this stood at 25%. This difference was evident across all causes of incapacity. For those adults for whom a private guardian was appointed, 61% of adults with dementia, 16% with learning disability, 27% with acquired brain injury (ABI), 37% with alcohol related brain damage (ARBD) and 37% with mental illness were placed on indefinite orders. This contrasted with the local authority percentages of 44%, 7%, 5%, 10% and 22%. What was most noticeable was the reduction in the granting of indefinite orders across all diagnostic categories other than mental illness.

Local authority and private welfare guardianship applications - indefinite orders as percentage of primary cause of incapacity



Duration of orders granted to Local Authorities 2012-2013

| Local Authority | Duration of Orders in Years | | | | | Indefinite |
|----------------------------|-----------------------------|--------|--------|------------|-------|------------|
| | 0 to 3 | 4 to 5 | Over 5 | Indefinite | Total | |
| | No. | No. | No. | No. | No. | % |
| Aberdeen City | 12 | 1 | | 5 | 18 | 28% |
| Aberdeenshire | 11 | | | 4 | 15 | 27% |
| Angus | 5 | 1 | 2 | 4 | 12 | 33% |
| Argyll and Bute | 4 | 1 | | 1 | 6 | 17% |
| City of Edinburgh | 6 | 5 | 2 | 5 | 18 | 28% |
| Clackmannanshire | 2 | | 1 | 1 | 4 | 25% |
| Dumfries and Galloway (LA) | 16 | 3 | | | 19 | 0% |
| Dundee City | 1 | 9 | 3 | 22 | 35 | 63% |
| East Ayrshire | 17 | 4 | | | 21 | 0% |
| East Dunbartonshire | 0 | | | 1 | 1 | 100% |
| East Lothian | 22 | | | 0 | 22 | 0% |
| East Renfrewshire | 1 | 2 | | 3 | 6 | 50% |
| Falkirk | 10 | 3 | | 2 | 15 | 13% |
| Fife (LA) | 19 | 20 | 3 | 13 | 55 | 24% |
| Glasgow City | 12 | 13 | 6 | 27 | 58 | 47% |
| Highland (LA) | 26 | 9 | 3 | 8 | 46 | 17% |
| Inverclyde | 2 | 1 | | | 3 | 0% |
| Midlothian | 6 | | | | 6 | 0% |
| Moray | 1 | | | 2 | 3 | 67% |
| North Ayrshire | 6 | | | 1 | 7 | 14% |
| North Lanarkshire | 15 | 11 | | 1 | 27 | 4% |

| | | | | | | |
|---------------------|-----|-----|----|-----|-----|-----|
| Orkney (LA) | 1 | | | 2 | 3 | 67% |
| Perth and Kinross | 5 | 1 | 4 | 8 | 18 | 44% |
| Renfrewshire | 1 | 3 | | 7 | 11 | 64% |
| Scottish Borders | 4 | 1 | | | 5 | 0% |
| South Ayrshire | 5 | 2 | | 1 | 8 | 13% |
| South Lanarkshire | 13 | 15 | 4 | 5 | 37 | 14% |
| Stirling | 4 | 1 | | 1 | 6 | 17% |
| West Dunbartonshire | | 2 | 5 | 2 | 9 | 22% |
| West Lothian | 5 | 3 | 1 | | 9 | 0% |
| Grand Total | 232 | 111 | 34 | 126 | 503 | 25% |

Duration of orders granted to private individuals 2012-2013

| Private | Duration of Orders in Years | | | | | Total | Indefinite |
|----------------------------|-----------------------------|--------|--------|------------|-----|-------|------------|
| | 0 to 3 | 4 to 5 | Over 5 | Indefinite | | | |
| | No. | No. | No. | No. | No. | % | |
| Aberdeen City | 1 | 11 | | 25 | 37 | 68 | |
| Aberdeenshire | 4 | 9 | 1 | 36 | 50 | 72 | |
| Angus | 4 | 2 | 5 | 6 | 17 | 35 | |
| Argyll and Bute | 4 | 6 | 6 | 5 | 21 | 24 | |
| City of Edinburgh | 10 | 12 | 25 | 32 | 79 | 41 | |
| Clackmannanshire | 1 | 5 | 3 | 6 | 15 | 40 | |
| Dumfries and Galloway (LA) | 9 | 11 | 7 | | 27 | 0 | |
| Dundee City | 1 | 2 | 13 | 45 | 61 | 74 | |
| East Ayrshire | 8 | 11 | 1 | 7 | 27 | 26 | |
| East Dunbartonshire | 3 | 13 | 6 | 9 | 31 | 29 | |
| East Lothian | 12 | 18 | 7 | 1 | 38 | 3 | |
| East Renfrewshire | 2 | 3 | 5 | 9 | 19 | 47 | |
| Eilean Siar | | 1 | 1 | 8 | 10 | 80 | |
| Falkirk | 7 | 8 | 1 | 6 | 22 | 27 | |
| Fife (LA) | 5 | 20 | 16 | 45 | 86 | 52 | |
| Glasgow City | 12 | 141 | 46 | 129 | 328 | 39 | |
| Highland (LA) | 9 | 18 | 5 | 11 | 43 | 26 | |
| Inverclyde | 3 | 5 | | 1 | 9 | 11 | |
| Midlothian | 1 | 7 | 2 | 4 | 14 | 29 | |
| Moray | 1 | 2 | | 15 | 18 | 83 | |

| | | | | | | |
|---------------------|-----|-----|-----|-----|------|----|
| North Ayrshire | 0 | 18 | 5 | 17 | 40 | 43 |
| North Lanarkshire | 54 | 28 | 11 | 16 | 109 | 15 |
| Orkney (LA) | 3 | 2 | | | 5 | 0 |
| Perth and Kinross | 4 | 3 | 24 | 13 | 44 | 30 |
| Renfrewshire | 5 | 16 | 3 | 23 | 47 | 49 |
| Scottish Borders | 8 | 1 | | 3 | 12 | 25 |
| South Ayrshire | 9 | 3 | | 12 | 24 | 50 |
| South Lanarkshire | 11 | 37 | 22 | 39 | 109 | 36 |
| Stirling | 1 | 11 | 1 | 7 | 20 | 35 |
| West Dunbartonshire | 2 | 9 | 4 | 17 | 32 | 53 |
| West Lothian | 5 | 11 | 12 | 4 | 32 | 13 |
| Grand Total | 199 | 444 | 232 | 551 | 1426 | 39 |

Local authority and private guardianship applications by primary causes of incapacity 2012-13

| Local Authority | Acquired Brain Injury | | | Alcohol related Brain Disorder | | | Dementia | | | Learning Disability | | | Mental Illness | | | Other | | | Totals | | |
|-----------------------|-----------------------|------|-----|--------------------------------|------|-----|----------|------|-----|---------------------|------|-----|----------------|------|-----|-------|------|-----|--------|------|-----|
| | LA | Priv | Tot | LA | Priv | Tot | LA | Priv | Tot | LA | Priv | Tot | LA | Priv | Tot | LA | Priv | Tot | LA | Priv | ALL |
| Aberdeen City | 2 | | 2 | 4 | | 4 | 7 | 16 | 23 | 3 | 21 | 24 | 2 | | 2 | | | | 18 | 37 | 55 |
| Aberdeenshire | | 2 | 2 | 1 | | 1 | 4 | 13 | 17 | 7 | 34 | 41 | 1 | 1 | 2 | 2 | | 2 | 15 | 50 | 65 |
| Angus | | 2 | 2 | 1 | | 1 | 7 | 8 | 15 | 3 | 6 | 9 | 1 | 1 | 2 | | | | 12 | 17 | 29 |
| Argyll and Bute | 1 | 1 | 2 | | | | 3 | 10 | 13 | 1 | 9 | 10 | 1 | 1 | 2 | | | | 6 | 21 | 27 |
| City of Edinburgh | | 7 | 7 | 2 | 2 | 4 | 8 | 37 | 45 | 3 | 30 | 33 | 4 | | 4 | 1 | 3 | 4 | 18 | 79 | 97 |
| Clackmannanshire | | | | | | | 2 | 7 | 9 | 1 | 8 | 9 | 1 | | 1 | | | | 4 | 15 | 19 |
| Dumfries and Galloway | 1 | 1 | 2 | | | | 9 | 14 | 23 | 5 | 10 | 15 | 4 | 1 | 5 | | 1 | 1 | 19 | 27 | 46 |
| Dundee City | 1 | 3 | 4 | 1 | 1 | 2 | 15 | 23 | 38 | 15 | 31 | 46 | 3 | 3 | 6 | | | | 35 | 61 | 96 |
| East Ayrshire | 2 | 1 | 3 | 3 | 2 | 5 | 3 | 9 | 12 | 12 | 15 | 27 | 1 | | 1 | | | | 21 | 27 | 48 |
| East Dunbartonshire | 1 | 2 | 3 | | 1 | 1 | | 10 | 10 | | 17 | 17 | | 1 | 1 | | | | 1 | 31 | 32 |
| East Lothian | 2 | 3 | 5 | | | | 8 | 12 | 20 | 12 | 23 | 35 | | | | | | | 22 | 38 | 60 |
| East Renfrewshire | | 2 | 2 | | | | 2 | 9 | 11 | 3 | 6 | 9 | 1 | 1 | 2 | | 1 | 1 | 6 | 19 | 25 |

| | | | | | | | | | | | | | | | | | | | | | |
|-------------------|---|----|----|---|----|----|----|-----|-----|----|-----|-----|---|---|---|---|---|----|----|-----|-----|
| Eilean Siar | | | | | | | 7 | 7 | | 2 | 2 | | 1 | 1 | | | | | 10 | 10 | |
| Falkirk | | | | 1 | | 1 | 4 | 13 | 17 | 9 | 9 | 18 | | | 1 | | 1 | 15 | 22 | 37 | |
| Fife | 2 | 4 | 6 | 6 | 1 | 7 | 20 | 50 | 70 | 24 | 29 | 53 | 3 | 1 | 4 | | 1 | 1 | 55 | 86 | 141 |
| Glasgow City | | 14 | 14 | 9 | 13 | 22 | 41 | 159 | 200 | 4 | 133 | 137 | 4 | 2 | 6 | | 7 | 7 | 58 | 328 | 386 |
| Highland | 1 | 1 | 2 | 4 | | 4 | 27 | 22 | 49 | 12 | 20 | 32 | 1 | | 1 | 1 | | 1 | 46 | 43 | 89 |
| Inverclyde | 1 | 2 | 3 | 1 | | 1 | | 4 | 4 | 1 | 3 | 4 | | | | | | | 3 | 9 | 12 |
| Midlothian | | 2 | 2 | | | | 1 | 3 | 4 | 4 | 9 | 13 | 1 | | 1 | | | | 6 | 14 | 20 |
| Moray | | 1 | 1 | | | | 2 | 6 | 8 | 1 | 11 | 12 | | | | | | | 3 | 18 | 21 |
| North Ayrshire | 1 | 2 | 3 | | | | 2 | 27 | 29 | 3 | 10 | 13 | 1 | 1 | 2 | | | | 7 | 40 | 47 |
| North Lanarkshire | | 4 | 4 | 7 | 1 | 8 | 8 | 44 | 52 | 11 | 58 | 69 | | 1 | 1 | 1 | 1 | 2 | 27 | 109 | 136 |
| Orkney | | | | | 1 | 1 | 1 | 1 | 2 | | 3 | 3 | 2 | | 2 | | | | 3 | 5 | 8 |
| Perth and Kinross | 1 | 1 | 2 | 2 | | 2 | 7 | 21 | 28 | 4 | 20 | 24 | 4 | 2 | 6 | | | | 18 | 44 | 62 |
| Renfrewshire | 1 | 3 | 4 | | 1 | 1 | 8 | 24 | 32 | 1 | 18 | 19 | | 1 | 1 | 1 | | 1 | 11 | 47 | 58 |
| Scottish Borders | 1 | 1 | 2 | | | | | 3 | 3 | 4 | 8 | 12 | | | | | | | 5 | 12 | 17 |
| South Ayrshire | 1 | 1 | 2 | | | | 3 | 16 | 19 | 2 | 6 | 8 | 2 | 1 | 3 | | | | 8 | 24 | 32 |

| | | | | | | | | | | | | | | | | | | | | | |
|------------------------|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|----|----|----|---|----|----|-----|------|------|
| South Lanarkshire | | 2 | 2 | 6 | 5 | 11 | 18 | 61 | 79 | 12 | 40 | 52 | 1 | | 1 | | 1 | 1 | 37 | 109 | 146 |
| Stirling | | | | | | | 4 | 12 | 16 | 2 | 8 | 10 | | | | | | | 6 | 20 | 26 |
| West Dunbartonshire | | 3 | 3 | 4 | 2 | 6 | 5 | 19 | 24 | | 8 | 8 | | | | | | | 9 | 32 | 41 |
| West Lothian | 1 | 1 | 2 | | | | 1 | 14 | 15 | 4 | 17 | 21 | 3 | | 3 | | | | 9 | 32 | 41 |
| Grand Total | 20 | 66 | 86 | 52 | 30 | 82 | 220 | 674 | 894 | 163 | 622 | 785 | 41 | 19 | 60 | 7 | 15 | 22 | 503 | 1426 | 1929 |

Geographic variation in duration of orders and causes of incapacity

Our interest in these figures

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

What we found

As reported above, there is wide variance in the length of time for which orders are sought and granted. This varied from no orders being granted on an indefinite basis in Dumfries and Galloway, 2% in East Lothian, 8% in Inverclyde and 10% in West Lothian to 81% of orders in Moray, 70% in Dundee City, 62% in Aberdeenshire and 55% in Aberdeen City.

We looked at applications put forward by local authorities where the Chief Social Work Officer was appointed guardian and where there were greater than 10 of these orders granted. In these cases the rate of indefinite orders granted ranged from 0% to 64%, with the average for local authority approved applications across Scotland at 25%, down from 31% in the previous year and 51% in 2010/11. Seven local authorities did not have any CSWO guardians appointed on an indefinite basis, whereas 5 authorities are recorded as having twice the national average of CSWO guardianships approved on an indefinite basis. The City of Edinburgh and Perth and Kinross Councils had the same number of orders where the Chief Social Work Officer was appointed guardian (18), yet in Perth and Kinross 44% of these were granted on an indefinite basis, while in Edinburgh this was the case in only 28% of orders granted. These differences cannot easily be explained.

There was noticeable variation as well in the lengths of time for which orders were granted to private applicants in different local authority areas, although these differences were, generally, not as pronounced as with local authority applications. The average for orders granted to private persons on an indefinite basis was 39%, down from 50% the previous year and 68% in 2010/11. There was very wide variation, however, with 83% in Moray, 74% in Dundee, 72% in Aberdeenshire and 68% in Aberdeen. At the other end of the scale, in Dumfries and Galloway no orders were granted on an indefinite basis where a private guardian was appointed. The figures for East Lothian, Inverclyde and West Lothian were, respectively, 3%, 11% and 13%.

There may well be reasonable explanations behind some of these variations. We broke down the data for orders granted in each area by the cause of incapacity for both CSWO and private guardians. There are no clear correlations in the granting of

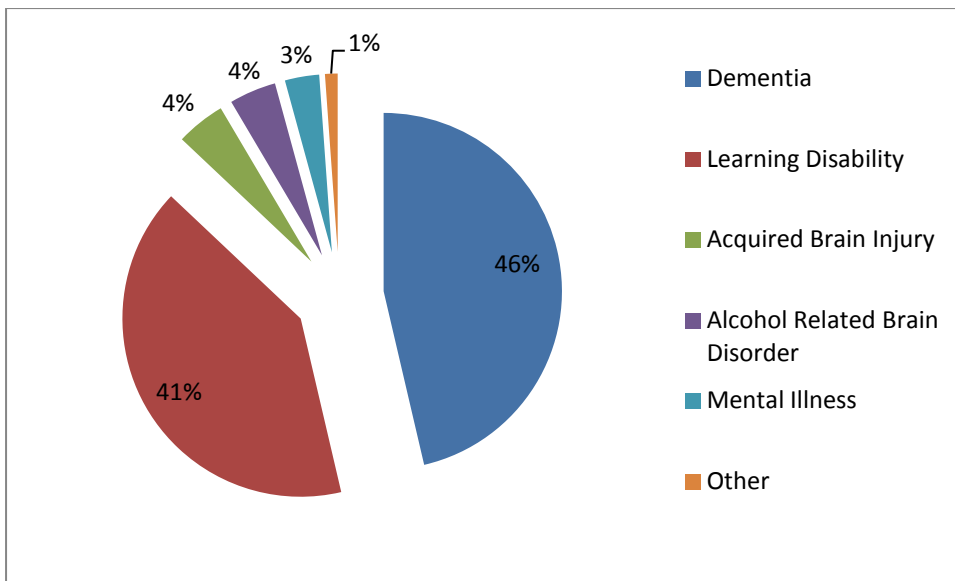
indefinite orders in local authority areas with the cause of incapacity. The percentage of the CSWO guardianship orders granted which were for adults with dementia was actually higher in South Lanarkshire than in Dundee (49% v 43%). Arguably, you might have expected a higher rate of indefinite orders in South Lanarkshire as a result. While 14% of South Lanarkshire CSWO orders were appointed on an indefinite basis, the figure in Dundee was 63%. What should be examined locally is the possibility that these variations may also be down to differences in the practice of solicitors, both private and local authority and, possibly, individual sheriff courts. The data needs closer examination of the circumstances of the individual cases to extract more useful information.

Age and diagnosis of people placed on guardianship

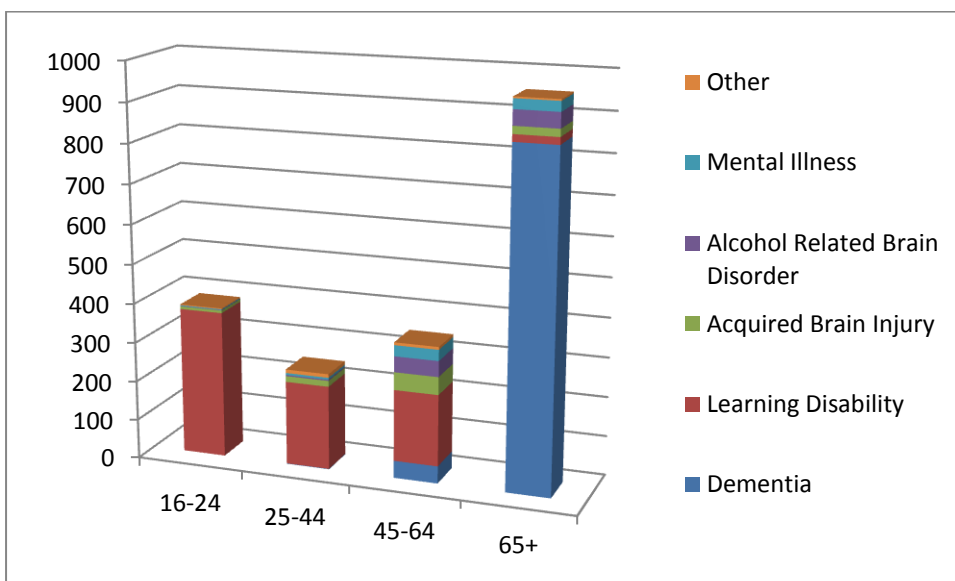
All welfare guardianships 2012-13 by primary diagnosis and age group

| Primary Diagnosis | Age Group | | | | | | | | | |
|--------------------------------|-----------|-----|-------|-----|-------|-----|-----|-----|-------|-----|
| | 16-24 | | 25-44 | | 45-64 | | 65+ | | Total | |
| | No. | % | No. | % | No. | % | No. | % | No. | % |
| Dementia | 0 | 0 | 1 | 0 | 44 | 13 | 849 | 89 | 894 | 46 |
| Learning Disability | 373 | 97 | 213 | 87 | 181 | 52 | 18 | 2 | 785 | 41 |
| Acquired Brain Injury | 7 | 2 | 15 | 6 | 45 | 13 | 19 | 2 | 86 | 4 |
| Alcohol Related Brain Disorder | 1 | 0 | 3 | 1 | 40 | 12 | 38 | 4 | 82 | 4 |
| Mental Illness | 2 | 1 | 5 | 2 | 28 | 8 | 25 | 3 | 60 | 3 |
| Other | 2 | 1 | 9 | 4 | 7 | 2 | 4 | 0 | 22 | 1 |
| Total | 385 | 100 | 246 | 100 | 345 | 100 | 953 | 100 | 1929 | 100 |

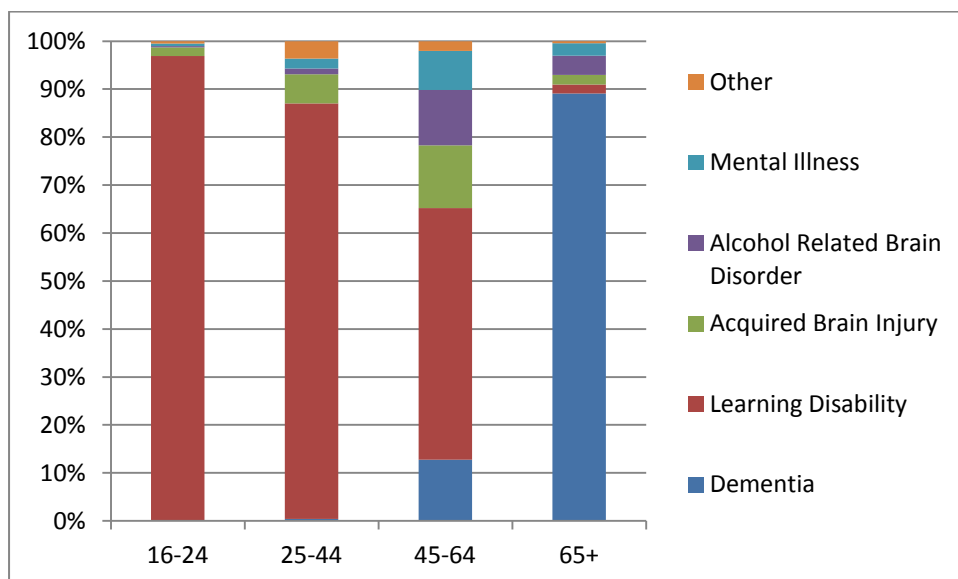
All welfare guardianships 2012-13 by primary diagnosis



Age group by primary diagnosis (number)



Age group by primary diagnosis (% percentage)



Our interest in these figures

The above charts show the age at which adults with different causes of impaired capacity are placed on welfare guardianship under the provisions of the Adults with Incapacity (Scotland) Act 2000. While some of this will be of no surprise, it has to be viewed in context of the length of time for which orders are granted for adults whose impaired capacity is a consequence of the different causes of incapacity.

What we found

We have seen a gradual decrease in the percentage of orders granted during the past few years where the primary cause of incapacity was dementia. In 2012/13 this decreased to 46%, down from 51% in the previous year and 55% of all orders in 2010/11. There was, conversely, an increase in the granting of orders for adults where the cause of incapacity was learning disability. In 2012/13 this rose to 41% of all orders, up from 37% in the previous year and 32% of all orders in 2010/11. This is a significant trend which has been evidenced in a relatively short period of time. In 2010/11 there was a gap of 23% between the use of orders for adults with dementia and those whose incapacity was related to their learning disability. In 2012/13 this gap narrowed to 5%.

In 2012/13, the increase in the use of welfare guardianship was solely due to the increase in the granting of welfare guardianship orders for adults whose incapacity was related to their learning disability. In 2012/13 there was no increase in welfare guardianship orders for adults with dementia. It may be that the increased use of Powers of Attorney which we have witnessed in the last several years is beginning to

have an effect, given that the majority of these orders are taken out by people over 65 years of age.

There were differences evident between those adults for whom local authorities (Chief Social Work Officers) were appointed guardians as opposed to private individuals when looking at the cause of incapacity for the adults on whom welfare guardianship was granted. Private guardians were more often appointed for adults with dementia, learning disability and acquired brain injury than was the case where the Chief Social Work Officer was appointed guardian. Chief Social Work Officers were much more likely to be appointed as guardians than private individuals when alcohol related brain damage or mental illness was the cause of incapacity.

In the past year, 48% of all orders granted on adults with a learning disability were for those under 25 years of age. This is down from 49% in the previous year and 53% in 2010/11. In the two years prior to this, this stood at about 43%. Seventy five percent of adults with learning disability placed on welfare guardianship in the past year were under the age of 45. For people with dementia, the percentage of orders granted where the adult was over 65 remained at the same level as last year at 95%.

In the 25-44 age group, learning disability was the cause of incapacity in 87% of orders granted, with adults with acquired brain injury and alcohol-related brain damage accounting for 7% of orders granted, down from 13% in this age group the previous year. In the 45-64 age group, learning disability was the cause of incapacity in 52% of orders, up from 40% the previous year. Adults whose incapacity was related to alcohol related brain damage and acquired brain injury combined accounted for 25% of the orders granted, down from 30% the previous year.

When looking at the cause of incapacity for all welfare guardianships in existence, we found a narrowing of the gap between learning disability (41%) and dementia (45%). We would expect this narrowing of the gap to continue as the use of guardianship for people with learning disability is growing at a greater rate than that for people with dementia. Over a third of all orders granted for adults with learning disability were granted when the adults were under 25 years of age. Nearly one half of all those orders granted for adults with dementia were granted when the adult was over 85 years of age.

Court processing of guardianship applications (Local Authorities and Private Individuals)

Delay between application and interlocutor, in months, for guardianships granted – Local Authority and Private applications 2012-13

| Local Authority | Local Authority applications granted | | | | | | |
|----------------------------|--------------------------------------|-----|---------------------|-----|---------------|----|-------|
| | Within 2 months | | Between 2 -6 months | | Over 6 months | | Total |
| | No. | % | No. | % | No | % | Tot |
| Aberdeen City | 10 | 56 | 7 | 39 | 1 | 6 | 18 |
| Aberdeenshire | 8 | 53 | 6 | 40 | 1 | 7 | 15 |
| Angus | 9 | 75 | 3 | 25 | | | 12 |
| Argyll and Bute | 5 | 83 | | | 1 | 17 | 6 |
| City of Edinburgh | 11 | 61 | 5 | 28 | 2 | 11 | 18 |
| Clackmannanshire | 4 | 100 | | | | | 4 |
| Dumfries and Galloway (LA) | 17 | 89 | 2 | 11 | | | 19 |
| Dundee City | 30 | 86 | 5 | 14 | | | 35 |
| East Ayrshire | 15 | 71 | 3 | 14 | 3 | 14 | 21 |
| East Dunbartonshire | | | 1 | 100 | | | 1 |

| Private applications granted | | | | | | | |
|------------------------------|-----|---------------------|----|---------------|---|-------|--|
| Within 2 months | | Between 2 -6 months | | Over 6 months | | Total | |
| No. | % | No. | % | No | % | Tot | |
| 35 | 95 | 2 | 5 | | | 37 | |
| 49 | 98 | 1 | 2 | | | 50 | |
| 17 | 100 | | | | | 17 | |
| 19 | 90 | 2 | 10 | | | 21 | |
| 68 | 86 | 7 | 9 | 4 | 5 | 79 | |
| 15 | 100 | | | | | 15 | |
| 25 | 93 | 2 | 7 | | | 27 | |
| 58 | 95 | 2 | 3 | 1 | 2 | 61 | |
| 23 | 85 | 2 | 7 | 2 | 7 | 27 | |
| 25 | 81 | 6 | 19 | | | 31 | |

| | | | | | | | |
|-------------------|----|-----|----|----|---|----|----|
| East Lothian | 16 | 73 | 6 | 27 | | | 22 |
| East Renfrewshire | 5 | 83 | | | 1 | 17 | 6 |
| Eilean Siar | | | | | | | |
| Falkirk | 10 | 67 | 4 | 27 | 1 | 7 | 15 |
| Fife (LA) | 32 | 58 | 14 | 25 | 9 | 16 | 55 |
| Glasgow City | 38 | 66 | 20 | 34 | | | 58 |
| Highland (LA) | 40 | 87 | 4 | 9 | 2 | 4 | 46 |
| Inverclyde | 2 | 67 | | | 1 | 33 | 3 |
| Midlothian | 5 | 83 | | | 1 | 17 | 6 |
| Moray | 3 | 100 | | | | | 3 |
| North Ayrshire | 5 | 71 | 2 | 29 | | | 7 |
| North Lanarkshire | 22 | 81 | 4 | 15 | 1 | 4 | 27 |
| Orkney (LA) | 2 | 67 | 1 | 33 | | | 3 |
| Perth and Kinross | 14 | 78 | 4 | 22 | | | 18 |
| Renfrewshire | 11 | 100 | | | | | 11 |

| | | | | | | |
|-----|-----|----|----|---|---|-----|
| 35 | 92 | 3 | 8 | | | 38 |
| 17 | 89 | 2 | 11 | | | 19 |
| 8 | 80 | 2 | 20 | | | 10 |
| 18 | 82 | 4 | 18 | | | 22 |
| 73 | 85 | 10 | 12 | 3 | 3 | 86 |
| 248 | 76 | 78 | 24 | 2 | 1 | 328 |
| 39 | 91 | 4 | 9 | | | 43 |
| 6 | 67 | 3 | 33 | | | 9 |
| 11 | 79 | 2 | 14 | 1 | 7 | 14 |
| 16 | 89 | 1 | 6 | 1 | 6 | 18 |
| 37 | 93 | 2 | 5 | 1 | 3 | 40 |
| 99 | 91 | 8 | 7 | 2 | 2 | 109 |
| 5 | 100 | | | | | 5 |
| 30 | 68 | 13 | 30 | 1 | 2 | 44 |
| 42 | 89 | 5 | 11 | | | 47 |

| | | | | | | | |
|---------------------|------------|-----------|------------|-----------|-----------|----------|------------|
| Scottish Borders | 4 | 80 | | | 1 | 20 | 5 |
| South Ayrshire | 6 | 75 | 2 | 25 | | | 8 |
| South Lanarkshire | 26 | 70 | 10 | 27 | 1 | 3 | 37 |
| Stirling | 5 | 83 | 1 | 17 | | | 6 |
| West Dunbartonshire | 9 | 100 | | | | | 9 |
| West Lothian | 4 | 44 | 5 | 56 | | | 9 |
| Total | 368 | 73 | 109 | 22 | 26 | 5 | 503 |

| | | | | | | |
|------|----|-----|----|----|---|------|
| 10 | 83 | 1 | 8 | 1 | 8 | 12 |
| 23 | 96 | | | 1 | 4 | 24 |
| 96 | 88 | 11 | 10 | 2 | 2 | 109 |
| 17 | 85 | 2 | 10 | 1 | 5 | 20 |
| 25 | 78 | 7 | 22 | | | 32 |
| 24 | 75 | 6 | 19 | 2 | 6 | 32 |
| 1213 | 85 | 188 | 13 | 25 | 2 | 1426 |

Delays in processing guardianship applications

Our interest in these figures

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

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

What we found

The year 2010-11 was the first time we had monitored the time taken to process guardianship applications once submitted to court. In the two years since then, we have seen significant improvements in the time taken by courts in processing applications. The data shows that the great majority of cases, both for private as well as local authority applications, are dealt with relatively quickly - in under 2 months. Courts dealt with 82% of all applications within two months of submission, an increase from 80% in 2011/12 and 71% in 2010-11. Courts approved 97% of all applications within six months of submission. There was not a great deal of discrepancy between the processing times of local authority as opposed to private applications. Three quarters (73%) of local authority applications were granted by the courts in less than two months. For private applications this was a little higher at 85%. There are, however, some interesting differences between different local authority areas both for private as well as local authority applications. Individual local authorities, private solicitors and individual sheriff courts might wish to reflect on this data to see whether there is any scope for further improving efficiency in the processing of these applications. We also recommend examining the time period between the decision being taken privately or by local authorities that an application for welfare guardianship should be made and the order finally being submitted to the sheriff court. This is not something that can be done by the Commission but could usefully be looked at on a local basis.

Our visits to adults on guardianship

During 2011/12 we introduced changes in our approach to our visiting and monitoring responsibilities regarding welfare guardianship. Prior to that we decided we had been spending an increasing amount of our time reviewing AWI forms and less time visiting people on guardianship. We audited our previous practice and decided to visit samples of individuals on guardianship. We visited more people in categories where we had found a greater need to intervene in the past (e.g. individuals with learning disability and/or autism spectrum disorder and those with alcohol related brain damage, for instance). We now write to all guardians and individuals on guardianship to advise them of our role. We make sure that they know they can contact us for advice and ask us to visit. As a result, we increased our visits to people on welfare guardianship by approximately 50%. In 2010/11 we undertook 379 visits to adults on guardianship. This increased in 2011/12 to 566 visits. In the past year this was maintained as we visited 560 adults on guardianship. We also introduced a new system for recording much more detailed information regarding our visits, our observations and interventions.

In 2012/13, the adults we visited had incapacity caused by the following :

- Learning Disability: 44%
- Dementia: 24%
- Autism Spectrum disorders: 10%
- Alcohol Related Brain Damage: 9%
- Acquired Brain Injury: 8%
- Mental illness: 2%
- Other 2%

Of those adults on guardianship we visited, 40% were resident in care homes, 36% in the family home, 18% were living in supported tenancies and 3% were in hospital at the time of the visit. This was almost exactly the same breakdown of visits as in 2011/12. Our visitors judged the accommodation to be of a good or adequate standards in 96% of the visits and the care and treatment was judged as being good or adequate for 96% of those visited. For those residents in care homes we found that 82% had a life history available to staff. This was considerably lower than the 98% observed in the previous year. We felt that there were 37 adults where the guardianship was seen to be particularly well managed. This was particularly disappointing as it was much lower than the 60 cases recorded last year. On the plus side, we only recorded 3 cases as being poorly managed which was well below the 10 recorded in 2011/12. We noted concerns that the Principles of the AWI Act did not appear to be adhered to in 23 cases which we followed up and will continue to

monitor and, in some cases, will visit again. This was also an improvement from what we had observed the previous year when we followed up on 48 cases where we did not feel the Principles of the Act had been adhered to.

Our concerns includes

- 116 (down from 137) instances where carers had had no discussion with the welfare guardian about the potential need to delegate specific powers to the carers in certain situations.
- We also noted that in 18% (down from 21%) of our visits to adults for whom there was a private guardian there was no evidence that the adult had been visited by the local authority supervisor in the previous six months and no evidence that the private guardian had been seen by the local authority supervisor as required in the previous six months in 25% (down from 31%) of these cases.
- Our visitors were of the view that the grounds for guardianship continued to be met in all but 1 case, down from 5 in 2011/12. Concerns about the management of the adult's finances arose in 36 (up from 24) instances. Where others were managing the adult's finances on their behalf we found little evidence that creative thought had gone into how the adult could benefit from his or her money in 69 of the 372 cases.
- 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. Eighteen percent of the 560 adults visited involved follow-on work by the Commission to resolve issues which had arisen during these visits. We recorded 262 separate issues followed up as a result of these visits. These were classified as relating to:
 - Legislation: 10%
 - Medication and consent: 29%
 - Placement: 15%
 - Behaviour which was difficult to manage: 5%
 - Restrictions: 6%
 - Communication: 4%
 - Mobility: 2%

**Adults with Incapacity (Scotland) Act 2000, 1st April 2012 to 31st March 2013,
Section 48 (regulated treatments) and Section 50 (disagreements with proxy).**

| Types of treatment | Section 48/50 Requests | Certificates Issued |
|---|-------------------------------|----------------------------|
| Medication to reduce sex drive | 26 | 24 |
| ECT | 24 | 18 |
| Treatment likely to lead to sterilisation | 0 | 0 |
| Dispute | 2 | 1 |
| TOTAL | 52 | 43 |

Our interest in this

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

What we found

The number of requests has remained static. Of the 52 requests, 6 were cancelled before the visit took place leaving 46 actual second medical opinions carried out. Certificates were refused on one occasion for medication to reduce sex drive, and one for ECT (where the use of the 2003 Act was deemed more appropriate by the second opinion doctor).

The Section 50 requests involved end of life care in one case and appropriate diagnosis and care in the other. Both second opinion doctors concurred with the referring consultant, but in one case the POA who was contesting the view of the consultant indicated that they were now in agreement so there was no need for a certificate to be issued under Section 50.



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