

Welfare  
guardianship

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## THE LEAFLET EXPLAINS

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If you would like this leaflet in an easy read format please call us on  
**0800 389 6809.**

## Our aim

We aim to ensure that care, treatment and support are lawful and respect the rights and promote the welfare of individuals with mental illness, learning disability and related conditions. We do this by empowering individuals and their carers and influencing and challenging service providers and policy makers.

## Why we do this

Individuals may be vulnerable because they are less able at times to safeguard their own interests. They can have restrictions placed on them in order to receive care and treatment. When this happens, we make sure it is legal and ethical.

## Who we are

We are an independent organisation set up by Parliament with a range of duties under mental health and incapacity law. We draw on our experience as health and social care staff, service users and carers.

## Our values

We believe individuals with mental illness, learning disability and related conditions should be treated with the same respect for their equality and human rights as all other citizens. They have the right to:

- be treated with dignity and respect
- ethical and lawful treatment and to live free from abuse, neglect or discrimination
- care and treatment that best suit their needs
- recovery from mental illness
- lead as fulfilling a life as possible

## What we do

Much of our work is at the complex interface between the individual's rights, the law and ethics and the care the person is receiving. We work across the continuum of health and social care.

- We find out whether individual care and treatment is in line with the law and good practice
- We challenge service providers to deliver best practice in mental health and learning disability care
- We follow up on individual cases where we have concerns and may investigate further
- We provide information, advice and guidance to individuals, carers and service providers
- We have a strong and influential voice in service policy and development
- We promote best practice in applying mental health and incapacity law to individuals' care and treatment



## What is a welfare guardian?

By law, if an adult is unable to make a safe decision about his or her own welfare, a court can appoint someone else to make decisions for them. This person is known as a welfare guardian. This leaflet is to help guardians, carers, and relatives of people who have guardians, to understand our role and what that means for them. The role of guardians is set out in the Adults with Incapacity Act (Scotland) 2000. This Act aims to protect and promote the welfare of adults with a mental illness, learning disability or other mental disorder, including dementia. If you need more general information about guardianship and the law you should contact the Scottish Government Justice Directorate. Their address is in this leaflet under 'Useful contacts'.

## Who can be a welfare guardian?

Guardians can be partners, carers, relatives or social workers.

## What is our role in guardianship?

Guardians can make decisions that can have a big impact on a person's life; for example, about where they live and how they should be cared for.

Our job is to help make sure these decisions are in the person's best interests and in line with the safeguards set out in law. The law says that a guardian's decision:

- must be of benefit to the person concerned;
- will only be taken when it is really needed;
- must take into account the wishes of the person;
- should restrict that person's freedom as little as possible;
- should only be taken when the person could not make a decision;
- should involve carers, relatives and people working closely with the person.

We receive copies of all welfare guardianship orders. We check these to make that all required information has been included.

## Why and when we visit people with guardians

Talking to the person who has a guardian is one of the best ways to check that guardianship is working. A visit also allows us to talk to people involved in caring for the person. As part of our general safeguarding role under the Act, we will visit a sample of individuals under guardianship across Scotland representing a range of conditions and circumstances. We may also choose to visit the person if we have concerns about guardianship arrangements. We often speak to the supervising social worker and/or the guardian. We always consider visiting the adult or private guardian if they have raised significant concerns with us. We ask to be told when there are any major changes or problems that affect the adult on guardianship.

We usually write to the person on a guardianship order and their carer to say we would like to visit and suggest a date. We send copies of this letter to the person's guardian, and their social worker.

## Who needs to be at a guardianship visit?

The main purpose of our visit is to meet and talk to the person who has a guardian. If the person has communication difficulties, it is important to have someone who can help with this. If the person would like someone else to be with them during our visit, we welcome this. If the person lives in a supported environment, such as a care home, we will ask to speak to someone responsible for his or her care.

## What kind of things do we discuss on a guardianship visit?

We will find out what the person we are visiting understands about their guardianship and how they feel about their care. We try to make sure the person is aware of their rights under the law. If carers are available we will ask if they are getting the back-up they need. If a guardian is a carer or a relative, we will ask about their contact with the social work supervisor. We will ask about welfare decisions that have been made, to help us check that these are in the person's best interests. We will also try to find out what is being done to encourage and develop the person's skills.



### **What can we do if someone is unhappy about a decision?**

If you are not happy with decisions that are being made, you can contact us and we can look into your concerns. We will explain what action we have taken, what options are available and who else might be able to help.

### **Can we help with difficult guardianship decisions?**

Yes. Please contact us if you are a guardian, carer or relative and want to discuss a difficult decision. For example, if there is a conflict between what the person on guardianship wants and what others think might be in their best interests. We will give you our views on what has worked best in similar circumstances and will try to help you find a way to reach a decision.

### **The role of the local authority supervisor**

The local authority has a duty to appoint a social worker to support, advise and supervise all private guardians. The supervisor will visit the guardian and the person on guardianship. They should visit within 3 months of an order being granted and then every 6 months. They will check that the powers granted under the order are being properly used and recorded. They will also make sure the powers are making a positive difference to the person's welfare. It is important that the supervisor and guardian agree what is expected of the guardian and what support can be expected from the supervisor.

## How to contact us

Mental Welfare Commission for Scotland  
Thistle House  
91 Haymarket Terrace  
Edinburgh  
EH12 5HE

Service user and carer freephone

**0800 389 6809**

Office

**0131 313 8777**

[www.mwscot.org.uk](http://www.mwscot.org.uk)

## Your views

We want to know what you think about our service. If we have done something wrong we would like to have the chance to try to put it right. Of course we would also like to hear when we have managed to help. So if you have a complaint, a comment or a compliment, please ring us on **0800 389 6809**. We will listen to what you have to say and use it to help us improve our service in the future.

## Useful contacts

Other people who can provide information about guardianship include:

Office of the Public Guardian  
Hadrian House  
Callendar Business Park  
Falkirk  
FK1 1XR

**01324 678 300**

[www.publicguardianscotland.org.uk](http://www.publicguardianscotland.org.uk)

Scottish Government  
Justice Directorate Law Reform Division  
Floor 2 West  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

**0131 244 2193**

[www.scotland.gov.uk/justice/incapacity](http://www.scotland.gov.uk/justice/incapacity)



**If you would like to receive e-mail updates or information by post please join our mailing list**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

E-mail \_\_\_\_\_

I am mostly interested in information for:

Learning disability service users or carers

Mental health service users or carers

Mental health professionals

*job title* \_\_\_\_\_

Learning disability professionals

*job title* \_\_\_\_\_

Other

*please specify* \_\_\_\_\_

I would like my information in another format

(for example, easy-read, tape, another language)

*please specify* \_\_\_\_\_

I agree to join the Mental Welfare Commission mailing list.

Please sign \_\_\_\_\_

We will store the information you provide on this form on a database. We will not share your details with anyone else. By filling in and returning this form, we understand that you agree to this. We will only send you direct mail if you have consented to join our mailing list.

## Other relevant publications

### Leaflets

Who we are and what we do

Monitoring your care and treatment

Visiting people

The role of Designated Medical Practitioners

### Good Practice Guidance

Supervising and supporting welfare guardians

Working with the Adult's with Incapacity Act in care homes

Rights, Risks and limits to freedom

Guardianship and young adults

Guardianship Checklist Consent to Treatment When to invoke the Adults with Incapacity Act

Consenting adults

Authorising significant interventions for adults who lack capacity

Money Matters

Details of the full range of our publications are available from our website

[www.mwcscot.org.uk](http://www.mwcscot.org.uk)



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