

East Ayrshire

Adults with Incapacity Guardianship Practitioners Guidance: Community Care

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Section 1

1. Purpose

This document has been compiled to provide a summary guide to practitioners, Mental Health Officers, Authorising and Supervising Officers on the use of Adults with Incapacity Legislation. It does not however replace the need for staff to refer to and familiarise themselves with the East Ayrshire Adults with Incapacity (Scotland) Act 2000 Procedures: December 2013.

1.1 Use of Adults with Incapacity Legislation

This Guidance has been updated to reflect the new procedure commenced as at 12 August 2014 which allows the local authority flexibility to reduce the regularity of visits, or where it deems that supervising the guardianship arrangements are no longer necessary, it sets out how the local authority can dispense with the need to continue supervision. The new arrangements also allow the supervisor to have e-mail or phone contact with the guardian whilst continuing to visit the adult. Please refer to section 2.2 for further detail of these changes.

All members of staff should be vigilant about the personal welfare, financial and property affairs of an adult who lacks capacity and where there appears to be concerns this should be addressed and discussed within routine care management processes. If there is a view that these issues cannot be resolved by measures available under routine care management processes and legislative intervention is considered necessary then an appointment should be made with the Legislative Solutions Forum for further advice and guidance or alternatively, an AWI Planning Meeting could be held. If, at the Legislative Solutions Forum, a recommendation is made to progress to a Guardianship, an AWI Planning Meeting or an AWI Case Conference should be arranged.

For full details of the types of meetings available, please refer to East Ayrshire Statutory Meetings Summary Operational Guidance: Community Care which is available via the Intranet on the Adult Support and Protection Page as detailed in Section 1.2 of this document.

This section will assist in distinguishing the roles and responsibilities of all involved in the process of an Adult with Incapacity Court application for Welfare Guardianship where the Local Authority is the applicant.

At times, crossover of roles and a need for flexibility will be required between practitioners and their manager as appropriate to the individual circumstances.

1.2 Resources

East Ayrshire Adults with Incapacity (Scotland) Act 2000 Procedures: December 2013

[East Ayrshire Statutory Meetings Summary Operational Guidance: Community Care](#)

Website for Guardianship/Intervention Order application Forms:

www.scotland.gov/topics/justice/law/orderandpublicsafety/peopleandthelaw/adultswit/incapacity/reports,certificatesandforms/localauthoritiesocialwork/forms

Website for The Office of the Public Guardian:

<http://www.publicguardian-scotland.gov.uk/>

Website for The Mental Welfare Commission:

<http://www.mwscot.org.uk/>

1.3 Roles and Responsibilities

Mental Welfare Commission (MWC)

In addition to the local Authority supervision responsibilities, The MWC also has a responsibility under the Act to exercise protective functions in respect to individuals subject to intervention or guardianship orders relating to personal welfare. The MWC scrutinises all interventions and guardianship applications and where not visiting directly corresponds with the adult and or guardian to explain the role and to ask that the guardian advise them of any change of circumstances or concerns they may have.

Visiting the adult is at the discretion of the MWC. The MWC would also investigate any complaints relating to the exercise of the functions relating to the personal welfare of the adult similar to those requirements of the local authority.

The local authority requires to notify the MWC in specific circumstances which is contained in MWC: Notifying the Commission Guidance for Staff in NHS/Local Authority/Independent Sector Services, dated 11 November 2013 and available on the MWC Website.

The Sheriff

Welfare guardians and their supervisors should not assume that a power exists unless it is clear in the order. This is especially important when considering anything that could be a deprivation of liberty such as restraint or CCTV surveillance, for example.

When the local authority has concerns or lacks clarity about the use or supervision of powers granted in an order they can request the following action to be taken by a Sheriff:

- Section 3 (3) allows for a sheriff following an application made by any person (including the adult themselves) claiming an interest in the property, financial affairs or welfare of an adult to issue directions to any person exercising functions under the Act “as to the exercise of those functions and the taking of decisions or action in relation to the adult as appear to him to be appropriate.
- Section 20 allows for an application to the Sheriff to be made by any person claiming an interest in the adult’s property, finances or personal welfare and for the Sheriff to make an order to safeguard or promote these interests. Decisions can include that:
 - 1) The continuing attorney shall be subject to the supervision of the public guardian; and/or
 - 2) The continuing attorney submits accounts for audit to the public guardian and/or
 - 3) The welfare attorney shall be subject to the supervision of the local authority and/or
 - 4) The welfare attorney provide a report to the Court as to the manner in which the welfare attorney has exercised his powers; and/or

- 5) Any of the powers granted by the continuing or welfare power of attorney or the appointment of an attorney be revoked.

The Office of the Public Guardian

With the commencement of the Adults with Incapacity (Scotland) Act 2000 (the Act) the Office of the Public Guardian came into being. One of the principle functions of the Public Guardian is to receive and investigate complaints regarding the exercise of functions relating to the property or financial affairs of an adult made:

- (i). In relation to continuing attorneys appointed in terms of the Act
- (ii). Concerning access to funds under Part 3 of the Act
- (iii). In relation to guardians or persons authorised under intervention orders

The Public Guardian can also investigate any circumstances made known in which the property or financial affairs of an adult seem, to the Public Guardian to be at risk.

The OPG has produced a document entitled: Information for social workers on the investigation process which is located on their website within the Investigation Section.

Summary of Roles and Responsibilities

A Planning Meeting is a **Workers** multi disciplinary Meeting where options for protection and statutory intervention can be discussed with the agencies involved, but not decided as this is the role of the case conference. This is in order to ensure all relevant information relating to any concerns is available to inform future meetings.

In circumstances where there has been a high level of multi agency involvement involving the adult and their carers an AWI Planning Meeting may not be required prior to proceeding to an AWI Case Conference.

A Planning meeting is arranged by Team Manager or Care Manager, minuted by Protection Admin and an MHO should also be present if the Team Manager or the Care Manager is not an MHO.

Pre AWI Case Conference

Care Manager	Others	Mental Health Officer
<ul style="list-style-type: none"> Assessment of Need and identification of diminished capacity/unresolved issue(s) which could require the use of AWIA 	<ul style="list-style-type: none"> Team Manager signs off Assessment of Need 	
<ul style="list-style-type: none"> Discussion with Doctors involved, specifically on whether the legal definition of incapacity is met Agreement that definition of incapacity is/is not met Discussion with Team Manager regarding next step if incapacity has been determined 		
<ul style="list-style-type: none"> Referral to Advocacy 		Confirm with Care Manager if Advocacy has been facilitated once allocated
<ul style="list-style-type: none"> Resource implications of Anticipatory Care Plan clarified and authorised 	<ul style="list-style-type: none"> Team Manager of Care Manager RAG 	
<ul style="list-style-type: none"> Liaise with Adult Protection Legislative Assistant for appointment at Legal Solutions Forum for advice if appropriate Assessment Paperwork including risk assessment, to be available for consideration at the Forum Recommendation on which part of the AWIA Act could be used and what the powers required may be. 	<ul style="list-style-type: none"> Legislative Solutions Forum 	
<ul style="list-style-type: none"> Care Manager to give copy of assessment etc... to MHO who will complete the report. 	<ul style="list-style-type: none"> Team Manager to arrange for referral to allocate an MHO The Service Manager – Mental Health Partnership will allocate an MHO 	<ul style="list-style-type: none"> MHO to consider assessment and if required meet with care manager and service user/carer

<ul style="list-style-type: none"> • Arrange Case Conference – as per departmental procedures • Explain purpose of case conference to service user and carers • Case conference attendance and sharing of information • Consider need for a request for an interim guardianship order • If Doctors are not at the case conference to contact them requesting completion of medical reports • Pass original medical reports to the MHO (not a copy) 	<p>Chairperson of case conference's agenda:</p> <ul style="list-style-type: none"> • Decision to use/not use legislation • Clarification that incapacity has been determined • Complete Recommendations • Powers identified • Timescale of completion of application to be agreed • Clarification of tasks and responsibilities • Confirm who will provide medical recommendations 	<ul style="list-style-type: none"> • Attend Case Conference and take part in decision making process
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Post AWI Case Conference

Care Manager	Others	Mental Health Officer
<ul style="list-style-type: none"> • If decision is made to progress with a Financial Guardianship only, then Care Manager to notify Adult Protection Legislative Assistant of commencement of Suitability Report to allow for SWIFT to be updated. 	<ul style="list-style-type: none"> • Protection Admin to ensure Adult Protection Legislative Assistant receives a copy of the AWI Case Conference Minute to allow for minute to be kept in central guardianship file. • Protection Admin to record all decisions of AWI Initial/Review Case Conferences on the Review Tab on SWIFT. 	<ul style="list-style-type: none"> • Begin MHO Assessment • Following Case Conference & decision to progress application for Welfare Guardianship, MHO to notify Adult Protection Legislative Assistant of commencement of Report to allow for SWIFT to be updated. • Obtain a copy of the Case Conference Recommendations • Plan action to meet statutory timescales • Liaise with Care Manager • Interview person, carers and relatives. Information on Court process and right to contest to be given to service users and carers. • Provide general advice and information to the Chair and Care Manager
<ul style="list-style-type: none"> • Following Initial AWIA Case Conference decision, significant changes within the Care Plan should be passed to the MHO to inform the MHO Assessment 		<ul style="list-style-type: none"> • Provide Information in a format suitable to their communication needs to person subject to application, carer and relative of their right to contest • Consult with two medics completing the medical reports if required • Ensure that medical reports are on appropriate forms and are competent to be

Care Manager	Others	Mental Health Officer
		<p>presented at Court</p> <ul style="list-style-type: none"> • Complete appropriate MHO Report • MHO should record details of actions undertaken on SWIFT i.e. completion of report. • Advise Legal Section of Guardianship application • Gather paperwork – 2 medical and MHO Report and complete instruction to Legal Section (Appendix 2) • A copy of the medicals and MHO Report to be e-mailed to Adult Protection Legislative Assistant
<ul style="list-style-type: none"> • Casework continues – care manager remains responsible for ongoing casework. MHO will only be involved in the application process. • Plan for implementation of order. 	<p>Legal to prepare summary application and to send to MHO, Adult Protection Legislative Assistant, Care Managers and Team Manager</p> <p>Manager should consider who the authorised officer will be when the order has been granted.</p>	<ul style="list-style-type: none"> • Consider contents of summary application prepared by Legal Section • Keep Care Manager up to date with process i.e. Court date • Liaise with Legal regarding Court date
<ul style="list-style-type: none"> • If no progress made within 12 week period following the decision to progress guardianship application, a review case conference should be convened to identify the barriers and resolve matters. 	<p>Legal representative will advise MHO, Care Manager and Adult Protection Legislative Assistant of Court outcome via e-mail</p>	
<ul style="list-style-type: none"> • Once order granted, Care Manager can now implement order. 	<p>Once order is received at Civic, the Adult Protection Legislative Assistant will log order onto SWIFT and send letters to those persons needing to be notified on behalf of the Service Manager, Mental Health Partnership. A letter will be sent to the person who will be the authorised officer i.e. Care Manager and also a letter to the person being subject to legislation.</p>	<ul style="list-style-type: none"> • If there is no matter outstanding of a legal nature then MHO passes information to their Team Manager for closure of involvement on SWIFT.
<ul style="list-style-type: none"> • Care Manager, if registered social worker now becomes authorised officer, if not, refers to Team Manager for allocation. • Care Manager will inform person subject to order (letter outlining this will be sent to the care manager) by the Adult Protection Legislative Assistant on 	<p>Team Manager of Care Manager to countersign case notes quarterly and provide ongoing supervision on the Care Manager Statutory Role.</p>	

Care Manager	Others	Mental Health Officer
<p>behalf of the Service Manager, Mental Health Partnership</p> <ul style="list-style-type: none"> • Authorised Officer prepares and inserts care plan and a copy of the order into the case file. Files should be kept up to date. 		
<ul style="list-style-type: none"> • Authorised Officer will notify everyone involved in writing if there are any relevant changes in the person's circumstances including death of the adult and change of Authorised Officer. • Reviews must be held as follows: <ul style="list-style-type: none"> - The Initial Review (or 3 month visit) 3 months following granting of the Guardianship Order - Initial 12 Monthly Review following granting of the Guardianship Order - Thereafter at 12 Monthly Intervals unless it has been agreed with the Guardian to formally alter the regularity of supervision as detailed within section 2 below. - Final Review – 3 months prior to Guardianship Order expiry date to consider the need for renewal All relevant parties to be invited. • Reviews should always address the need for continued guardianship and if there is a decision that there is no ongoing need they should consult with the relevant Service Manager, for consideration of revocation of the Order. 	<p>The Care Managers responsible Line Manager should notify Service Manager, Mental Health Partnership and Adult Protection Legislative Assistant who will notify interested parties of any change of authorised officer. Adult Protection Legislative Assistant will update changes on SWIFT.</p>	

Note: Where there has been a significant change in circumstances, or the application for the agreed order has not been lodged in Court within 12 weeks, an AWI Review Case Conference should be convened as detailed within East Ayrshire Statutory Meetings Summary Operational Guidance: Community Care. The Chair and attendees should remain the same as the AWI Initial Case Conference.

All Private Guardianship applications will be allocated by Service Manager: Mental Health Partnership.

Section 2

2.1 Operational Guidance for Authorised Officers

Operational Guidance Note for persons designated as Authorised Officers and their Team Managers/Leaders in terms of Guardianship via the Adults with Incapacity Act. This document is for cases where the Local Authority Chief Social Work Officer is the Welfare Guardian and the Order has been granted.

Responsibility within the Local Authority for Guardianship Orders.

Although formally the Chief Social Work Officer becomes Welfare Guardian once the order has been granted, the responsibility for carrying out the duties of a Welfare Guardian is delegated to the Social Work Officer involved in assessment and care management and will be the Authorised Officer. The Authorised Officer can be either a registered social worker or a support assistant (G9)

Registration of Orders

Once an application for a Guardianship Order has been granted it will be sent by the Court to the office of the Public Guardian for registration. The OPG will then send a copy of the Order to the local Authority. The original order will be held at the Civic Centre North (Protection Unit). Once the Order has been granted the power(s) within the Order can be implemented.

Notification to relevant persons.

The notification to relevant persons will be processed from the Civic Centre North, under the discretion of the Service Manager Mental Health. The Service manager will then liaise with the service user's care manager who will confirm who will be the Authorised Officer. The Authorised Officer is the person the Chief Social Worker will delegate responsibility to for ensuring the requirements of Guardianship are implemented and used. Notification and a copy of the Order will then be sent by Civic Centre North Staff to all those persons who were involved in the application process

Intimations will be forwarded to:

- The two Doctors who provided the incapacity certificates.
- The Mental Health Officer who completed the application.
- The Chief Social Work Officer.
- Legal Section.
- Service Manager Mental Health.
- Team Manager/Leader.
- The Public Guardian.
- The Mental Welfare Commission
- If relevant the place where the service user is residing.

The Service Manager: Mental Health Partnership will ensure SWIFT is updated, in relation to whom the Authorised Officer will be. The person who will act as the Authorised Officer will

receive written notification of their appointment, and a letter to be given to the person subject to the Order. The Authorised Officer will personally deliver the letter to the person subject to Guardianship and will advise them of the requirements of the Order. Details of the operation of the order will also be shared with any relative/carer by the Authorised Officer. The Authorised Officer will also inform and give a copy of the Order to anyone now involved with the person.

Operational Requirements

Guardianship is a form of intervention which has a clear timescale identified in the Order.

The Authorised Officer should now manage the case on a statutory basis and care records should be regularly kept up to date. Detailed care plans and how they will be implemented should be detailed in the case file, along with details of any risk assessment.

The Authorised Officer must ensure that the adult's nearest relative, named person (if applicable), carer and anyone else involved is kept up to date with information pertaining to the service user and be made aware of the contact number and working location of the Authorised Officer. The Authorised Officer should also consider the need for out of hours contact and if necessary put in place, arrangements to meet the persons needs. (Ie Out of Hours Service)

Should there be any change of staff reallocation, or long term absence of the Authorised Officer, the Team Manager/Leader of the Authorised Officer should identify an alternative worker and notify everyone concerned in the adult's care without delay. No Guardianship case should be unallocated as the Chief Social Work Officer is statutorily required to provide the person subject to Guardianship with an identified individual. Notification of any changes should also be sent to the Mental Welfare Commission, the Public Guardian, Service Manager, Adult Protection Legislative Assistant and Chief Social Work Officer by the Authorised Officer.

Contact by the Authorised Officer with the adult.

It is the Authorised Officer's responsibility to monitor the adult's personal welfare. The Authorised Officer should ensure that he or she meets regularly with the adult (at least every three months) and holds discussions with relevant others accordingly.

Reviews.

A formal review requires to be held at least every 6 months, with the first formal review taking place within the first 12 weeks or, 4 – 8 weeks if the adult is resident within a care home. In cases where the person resides in a residential establishment and while the adult remains on Guardianship the reviews must be arranged by the Authorised Officer. Although a Local Authority Welfare Guardian has no financial powers the Authorised Officer should ensure that the adult's finances remain under consideration and liaise with any Financial Guardian.

Authorised Officers must always be alert to the potential need for other interventions in the adult's situation. Any indication of the need for other legal interventions should be fully discussed in supervision with their Team Manager/Leader.

The review should be chaired by the Team Manager. The chair of the review should ensure that the statutory requirements are fully explored in the review and should make a recommendation on the need/ or not for the continuation of **all or any of the powers within** the Guardianship. If there are any significant changes or complex decisions requiring discussion and the chair or Authorised Officer is not an MHO then the Team Manager should

contact the Service Manager: Mental Health Partnership who will make the decision whether an MHO or Legal Services are required to attend and make arrangements for this.

The review form in Appendix 3 should be used for the review process although to prevent duplication of effort, if the authorised/supervising officer report coincides with the care management review the SSA 6 review form can be used to record the review as long as all areas contained within appendix 3 are sufficiently recorded in the narrative.

Renewal of Guardianship.

The Authorised Officer should when prompted by the Adult Protection Legislative Assistant or by their, own calculation, 3 month prior to the end of the Order's duration should proceed to arrange a formal review to explore whether or not the Guardianship should be renewed. This review should be chaired by a Team Manager, however if the Team Manager or Authorised Officer is not an MHO then contact should be made with Service Manager to clarify whether an MHO should be required dependent upon the circumstances of the grounds for renewal.

The Local Authority has a duty to apply for renewal of Guardianship where the criteria and need for continued Guardianship remains. A process for prompting Authorised Officers of timescales for renewal consideration is in place at Civic Centre North. However, each Authorised Officer will have details of when the Order was implemented and should calculate when the order will expire and detail this within the case files. Authorised Officers should also notify relevant persons of the timescales for renewal consideration. The process of renewal has a prescribed form AWI (3) and should be completed by an MHO along with a medical report confirming incapacity.

Termination, Removal or Replacement of Guardianship.

A sheriff on application made by the adult, or by any other person i.e. Local Authority, can recall a guardianship Order if the Sheriff is satisfied that the grounds for appointment of a Guardian are not fulfilled or, that the interest of the adults in their property, financial affairs or personal welfare can be satisfactorily safeguarded or promoted otherwise than by a Guardianship.

A Sheriff on application can also replace a Guardian or substitute another person willing to act in this capacity. The local Authority and the Mental Welfare Commission may recall the Welfare Powers of a Guardian on the same grounds as the Sheriff. However such recall is subject to appeal to the Sheriff. The process if implemented would be in line with assessment of needs, care planning and Guardianship case conferencing.

The Public Guardian may also in cases of Financial Guardianship recall the Powers of a Guardian. Authorised Officers should be alert to changing needs which might indicate a requirement to add or to amend the Powers contained in a Guardianship Order. As a matter of good practice, changes that may be required should be considered at an early date and should not await a subsequent review or renewal to discuss future planning.

Application for recall

Anyone claiming an interest, including the adult, may apply for a recall. However the Local Authority should make such an application if it appears necessary and no-one else is doing so. Authorised Officers should seek guidance from their Team Manager/Leader, Service Manager or Legal Section, if the adult or carer intends making an application for recall and arrangements will be made for advice to be given to the proposed applicant.

Protection of persons subject to Guardianship

Should a situation arise where it is believed, or is reported to the Authorised Officer that the service user is being subject to abuse, exploitation, undue influence or any matter where their welfare could be at risk, it is the responsibility of the Authorised Officer to report this to their Team Manager/Leader without delay and arrangements for a full investigation to be made.

Should an allegation/concern be related to financial matters, the Team Manager/Leader and Service Manager should decide whether to report the investigation outcome to the Office of the Public Guardian/Mental Welfare Commission on the service user's circumstances, giving details and outcomes of the investigation.

2.2 Operational Guidance for Supervising Officers

This Guidance has been updated to reflect the new procedure commenced as at 12 August 2014 which allows the local authority flexibility to reduce the regularity of visits, or where it deems that supervising the guardianship arrangements are no longer necessary, it sets out how the local authority can dispense with the need to continue supervision. The new arrangements also allow the supervisor to have e-mail or phone contact with the guardian whilst continuing to visit the adult. Please refer to section 2.2 for further detail of these changes.

Operational Guidance Note for persons designated as Supervising Officers and their Team Managers/Leaders in terms of Guardianship via the Adults with Incapacity Act. Local authorities are also required to supervise welfare attorneys and persons authorised under intervention orders that relate to personal welfare matters, but only where ordered to do so by the sheriff. Supervising Officers should be registered social workers.

Supervision is intended to ensure that proxies are carrying out their functions properly. It should focus specifically on potential problems that might require action by the local authority. Supervision of individual guardians should relate to the particular circumstances of that case within the context of general local authority guidance and procedures. Where joint welfare guardians have been appointed the local authority is expected to provide supervision for each person appointed.

Supervision Regulations

- The local authority must arrange for every adult who is 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 6 months. Visits may be made more frequently at the discretion of the local authority.
- Where the local authority is supervising a person authorised under an intervention order or a welfare attorney, the local authority should arrange for the adult and the proxy to be visited at a frequency determined by the sheriff, or if no period is determined by the sheriff at least every two months for the duration of a period to be determined by the sheriff.

Records to be Kept by Welfare Guardians

Section 65 provides that a guardian shall keep records of the exercise of his or her powers. It would be good practice for a welfare guardian to keep on file:

- A copy of the interlocutor containing the guardianship order.

- A written plan for implementing the order, based on the review of the adult's personal welfare which preceded the application.
- A note of all action taken.
- The file should include a record of any incidents affecting the person's welfare such as accidents causing physical injury. It should cover changes in family structure or relationships, the adult starting or stopping education, hospital admissions etc.
- Any correspondence with medical practitioners, care home managers or others concerning matters covered by the guardianship order.
- A note of every meeting held formally to review the implementation of the order.
- A note of every meeting held with the adult or others involved in their decisions about his or her personal; welfare.
- A note of issues discussed at supervision meetings.
- A note of any incidental expenses arising out of the order, along with receipts so that reimbursement can be claimed.
- A note to remind the guardian to apply in good time for the renewal of the order.

Visits

- The local Authority may arrange or contract with another body to carry out supervisory visits. The local Authority may for example ask another Authority to visit on its behalf when the guardian does not live in the same local government area as the adult.
- If appropriate, visits to the adult and the guardian may be combined, although consideration should be given to carrying out separate visits, for example where there appears to be conflict between the guardian and the adult.
- Visits should normally be made by appointment, but in certain circumstances, it may be appropriate for unannounced visits to be made.
- Visits should be recorded so that it is clear that the purposes of supervision listed above are being fulfilled. For example, written comments should be made following each visit on the continuing suitability of the guardian and on whether the guardian's powers should be recalled. In particular relevant changes in the adult's circumstances should be recorded such as major increases or decreases in the adult's resources.
- Clear records should be kept where the outcome of a visit is the conclusion that an action such as application to the sheriff is required and the records should be in a format that ensures subsequent monitoring that the action is carried out.
- Records should also note if any issues arise about the provision of services to the adult, to enable appropriate action to be taken, in conjunction with the adult's care manager or key worker.

Provision of Information

- The Regulations require attorneys under the supervision of the local authority and non local authority welfare guardians to provide certain reports and other information about the welfare of the adult that the local authority may request from time to time.

- The information provided by proxies should be recorded in such a way that any action required by the local authority as a consequence is identified clearly and can be monitored.
- Local authority guidance on reporting might exempt proxies who live a distance from the adult from reporting accidents or incidents, of which they might not routinely be aware. In these circumstances, the authority would need to rely on reporting from others, such as agencies providing care to the adult,
- The regulations on supervision do not extend to matters relating to reimbursement and remuneration of a guardian. The local authority should however, make itself aware, through supervision, of circumstances in which a welfare guardian is receiving either reimbursement for reasonable outlays incurred in the exercise of their functions or, more usually remuneration for carrying out their functions.

Consultation

- The principles must be observed by anyone exercising functions under the 2000 Act. It would be good practice for the local Authority to consult the adult regularly on the performance of his or her functions.
- The adult's nearest relative, primary carer, named person or any other person whom the sheriff has directed to be consulted about the guardians personal welfare should also be given a regular opportunity to give his or her views about how the proxy is exercising his/her functions.

Seeking Advice

- The local authority has a responsibility to give a guardian information and advice on the exercise of welfare powers. This will usually happen in supervision meetings. However if a new issue emerges in between such contact, an individual welfare guardian should be able to contact his or her supervisor within the local authority for advice. The guardian should be given all available contact details in relation to this.
- The MWC will have been notified of the welfare guardian's appointment by the OPG. The MWC can provide invaluable information and advice to anyone exercising welfare powers in relation to an adult whose capacity is due to mental disorder.

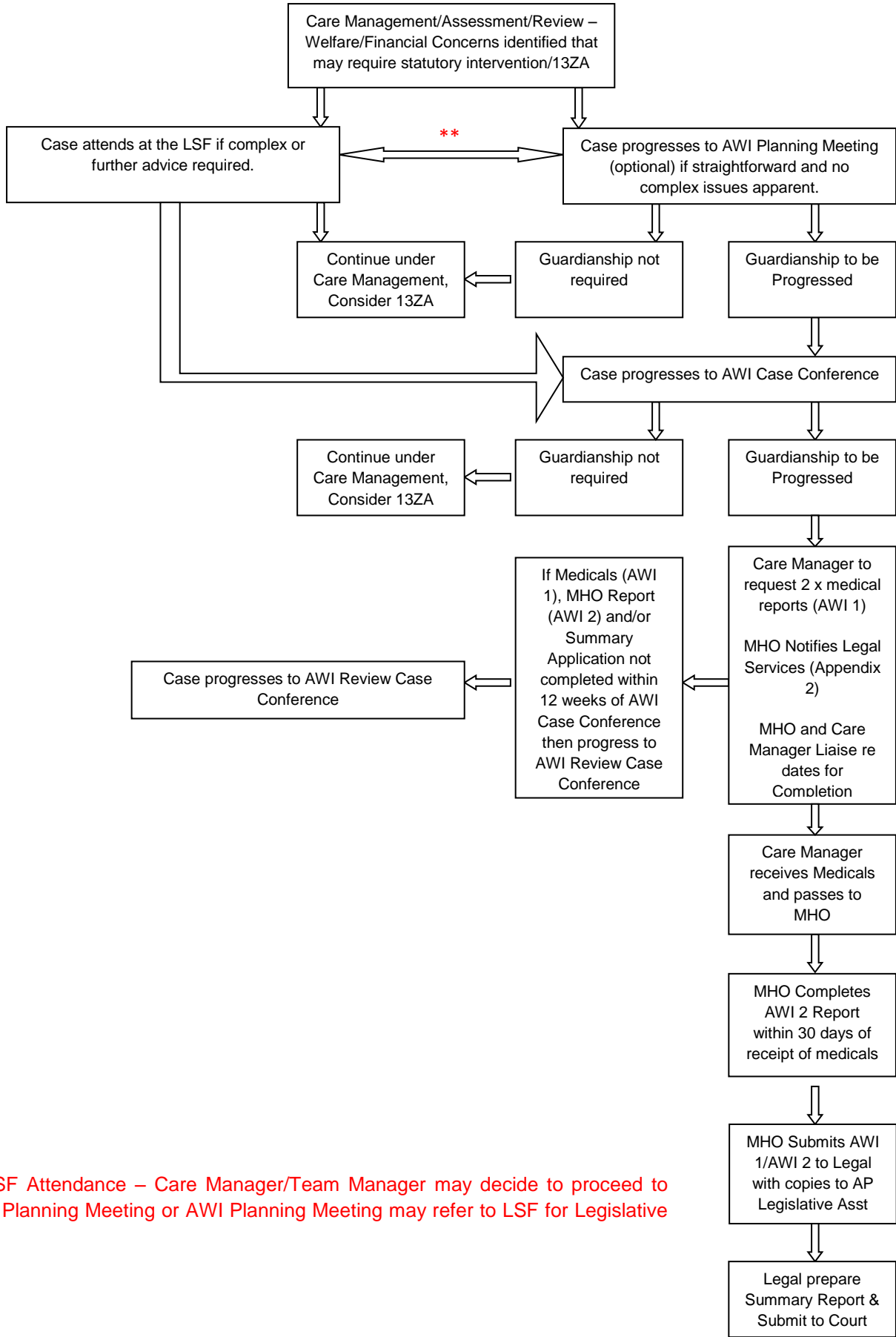
Protection of persons subject to Guardianship

Should a situation arise where it is believed, or is reported to the Supervising Officer that the service user is being subject to abuse, exploitation, undue influence or any matter where their welfare could be at risk, it is the responsibility of the Supervising Officer to report this to their Team Manager/Leader without delay and arrangements for a full investigation to be made.

Should an allegation/concern be related to financial matters, the Team Manager/Leader and Service Manager should decide whether to report the investigation outcome to the Office of the Public Guardian/Mental Welfare Commission on the service user's circumstances, giving details and outcomes of the investigation.

It should be noted that a Financial Guardianship Order alone does not require the allocation of an Authorised or Supervising Officer, however there must be a Key Worker/Case Worker allocated.

AWI Guardianship Process Flow Chart



** LSF Attendance – Care Manager/Team Manager may decide to proceed to AWI Planning Meeting or AWI Planning Meeting may refer to LSF for Legislative

Department of Educational and Social Services

Executive Director: Graham Short
 Head of Service: Community Care: Eddie Fraser
 If telephoning please ask for:



Direct Dial :

Fax :

E-Mail :

MEMORANDUM

TO: Craig Young, Litigation and Advice Team Leader, Legal Services

FROM:

DATE: Friday, 16 June 2017

SUBJECT: Instruction for Application Under Adults with Incapacity
 (Scotland) Act 2000

Name of Adult:	
Address of Adult:	
DOB of Adult:	
Diagnosis of Adult:	

Name of Nearest Relative:	
Relationship to Adult:	
Address of Nearest Relative:	
Telephone Number of Nearest Relative:	

Nature of Order Sought:	
Brief description of issues/risks:	
Details of Reports enclosed:	<ul style="list-style-type: none"> • •
Additional comments:	

Welfare Guardianship/Renewal

Details of Powers Sought

- Power to Reside
-
-
-
-

Proposed Welfare Guardian: Eddie Fraser, Chief Social Work Officer

Address: Council HQ, London Road, Kilmarnock

Telephone Number: 01563 (57)6546

Financial Guardianship/Renewal

Details of Powers Sought

-
-
-
-
-

Proposed Financial Guardian:

Address:

Telephone Number:

Intervention Order

Details of Powers Sought

-
-
-
-
-

Proposed Intervener: Eddie Fraser, Chief Social Work Officer

Address: Council HQ, London Road, Kilmarnock

Telephone Number: 01563 (57)6546

AUTHORISING/SUPERVISING OFFICER REVIEW REPORT OF APPOINTED GUARDIAN(S)

Name of Person Subject to Guardianship:	
Date of Birth:	
Type of Guardianship Order Granted:	
Date Guardianship Order Granted:	
Duration of Guardianship:	
Date of this Review:	
Date Next Review Due:	

*** All Guardianships must be reviewed 3 months prior to the date the guardianship is due to expire.**

Name and Address of Guardian:	Relationship to Adult:	Tel Number/Contact Arrangements (including Out of Hours):

	Name and Address:	Telephone Number:
Authorised Officer:		
Supervising Officer:		
Person Managing Financial Affairs i.e. Appointee/Financial Guardianship/Management of		

Residents Finances/Access to Funds:		
Person(s) for whom Access to the Adult is Restricted:		

Powers of Guardian(s)

Powers:	Yes/No:	Comments:
Decide where the Adult should reside	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If no, the adult may be free to leave. Is there a policy to manage this situation?</i>
Provide social, cultural, or educational activities and holidays	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Access to be given to medical, social work or care staff when required	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Financial Powers of any kind (usually as financial guardian or POA)	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If no, add details above of who is managing finances.</i>
Consent to medical treatments, research or supervise medication	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>*A Section 47 Treatment Certificate to authorise treatment may be necessary. See GP or Psychiatrist.</i>
<i>* The Act requires a Treatment Certificate be completed even when there is a guardian/attorney with this power.</i>		
Take legal action of any kind on behalf of the adult	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Access to any confidential records or data held on the adult.	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If Yes, guardian has the same access to Care Home's records as adults</i>
Dress, diet, personal appearance or hygiene	Yes <input type="checkbox"/> No <input type="checkbox"/>	
With whom the adult may consort or restrict or control access to certain people	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If Yes, add details below of any person who has restrictions put on their access to the adult.</i>
Accompany the adult, or monitor or supervise the adult at all times.	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If No, is the adult's right to freedom being respected/promoted?</i>
Other, please specify.	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>If there are more powers attach a separate sheet detailing these.</i>

Note:

If any of the above powers have been delegated to staff, please indicate within the comments box.

Events e.g. Death or admission to hospital must be given to the Supervising/Authorising Officer detailed on page 1 of this form.

Review Summary

Update on the Adults Circumstances	
Description of how the powers are being used	
Are they in line with the principles?	
• Do they benefit the adult?	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Are the views of the person on guardianship and the carers known and taken into account?	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Are only those decisions made that the adult lacks capacity to make?	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Are they offered choices?	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Do the decisions take into account less restrictive alternatives?	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Is the adult encouraged to use existing skills and, where possible, develop new skills?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If no to any of the above, how is this to be addressed?	
Views of the Adult (or reason why views not included)	
Views of the Guardian(s)	

Views of the Care Manager

Views of any other relevant person (Manager of Care Home, person with delegated powers etc...)

Are all the powers still required?

Yes No

Area of Disagreement (if any)

Any other relevant information

Summary of Review including any further action or intervention required

Signature of Supervising/Authorising Officer:

Designation of Supervising/Authorising Officer:

Date Signed by Supervising/Authorising Officer:

N.B. This document should be retained in the Orange Case File and a copy sent to:

Lisa Brock
Adult Protection Legislative Assistant
Adult Protection Unit
Civic Centre North
John Dickie Street
Kilmarnock
KA1 1HW

Please note that the Mental Welfare Commission does not require to receive a copy of this minute; however should the review highlight concerns regarding the actions of the guardian further consideration should be given to undertaking a Section 10 Inquiry – Adults with Incapacity (Scotland) 2000. Or if concerns are related to a deficiency in care and treatment in a setting other than a hospital then a S33 Inquiry – Mental Health (Care and Treatment) (Scotland) Act 2003 should be considered.

Section 10 Inquiry – Adults with Incapacity (Scotland) 2000

A Local Authority shall have the following general functions under this Act –

- a) To supervise a guardian appointed with functions related to the personal welfare of an adult in the exercise of those functions
- b) To consult the Public Guardian and the Mental Welfare Commission on cases or matters relating to the exercise of functions under this Act in which there is, or appears to be, a common interest
- c) To receive and investigate any complaints relating to the exercise of functions relating to the personal welfare of an adult made:
 - (i) In relation to welfare attorneys
 - (ii) In relation to guardians or persons authorised under intervention orders
- d) To investigate any circumstances made known to them in which the personal welfare of an adult seems to be at risk
- e) To provide a guardian, welfare attorney or person authorised under an intervention order, when requested to do so, with information and advice in connection with the performance of his functions in relation to personal welfare under this Act.

S33 Inquiry – Mental Health (Care and Treatment) (Scotland) Act 2003

Duty to Inquire

- 1) Where it appears to a Local Authority that:
 - (a) A person in their area who is 16 years or over has a mental disorder; and
 - (b) Any of the circumstances mentioned in subsection 2) below apply

The authority shall cause inquiries to be made in the person's case.

- 2) Those circumstances are:
 - (a) That the person may be, or may have been, subject, or exposed at some place other than a hospital to:
 - (i) Ill treatment;
 - (ii) Neglect; or
 - (iii) Some other deficiency in care or treatment
 - (b) That because of the mental disorder, the person's property:
 - (i) May be suffering, or may have suffered, loss or damage; or
 - (ii) may be, or may have been, at risk of suffering loss or damage;
 - (c) That the person may be:
 - (i) Living alone or without care; and
 - (ii) Unable to look after himself or his property or financial affairs;
 - (d) That the person is not in hospital and, because of the mental disorder, the safety of some other person may be at risk.