

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Are You Applying for Welfare Guardianship?

Introduction

The Adults with Incapacity (Scotland) Act 2000 [2000 Act] affords any person with an interest in the welfare of an adult who lacks capacity the opportunity to apply to become that adult's welfare guardian. Where the applicant is someone other than the local authority, this is often referred to as a *private* guardianship application.

A welfare guardianship order confers specific powers that authorise the appointed guardian to make decisions on the adult's behalf. The decision-making powers will have been specified in the application and granted in the sheriff court. Examples of powers commonly sought include:

- The power to determine where the adult should reside;
- The power to convey the adult to (X) place of residence and return them there should they absent themselves from (X) place of residence.
- The power to make arrangements on the adult's behalf concerning the provision of health and social care;
- The power to make decisions as to who might access personal information relating to the adult;
- The power to take legal action on behalf of the adult in respect of any matter relating to his or her welfare

The Application Process

In a significant majority of cases, an applicant for welfare (and/or financial and property) guardianship will instruct a solicitor to progress the legal elements of the application process. It is not essential to engage the services of a solicitor, and the applicant can personally prepare and submit the application if preferred.

Funding the Application

If you intend to engage a solicitor, you should enquire as to the option of pursuing a legal aid application. There are a number of fees associated with an application, including: the cost of instructing a solicitor; payment for the required medical reports; and a fee for lodging the application in court. It is possible to seek the power to have any fees reimbursed from the adult's capital after the order is granted. The awarding of legal aid reduces any financial burden on the applicant, and also serves to reduce

any impact on the adult's personal finances. It should be remembered, however, that an award of legal aid will only be made in respect of a solicitor's fees.

The Role of the West Dunbartonshire CHCP:

Mental Health Officer/Chief Social Work Officer Report

The 2000 Act places a number of responsibilities on the local authority in respect of private guardianship orders. During the application process, the key role of the local authority is to appoint a Mental Health Officer [MHO] to complete a report concerning the appropriateness of the order sought, and the suitability of the proposed guardian. This report is required in all cases where the adult lacks capacity as a result of mental disorder. Where the adult lacks capacity as a result of an inability to communicate due to physical disability, the Chief Social Work Officer will delegate the task of completing a report to an appropriate social work officer.

Supporting the Application Process

West Dunbartonshire CHCP (WDCHCP) welcomes the opportunity to assist prospective welfare guardians during the application process. This assistance will be available in the form of advice and guidance, and the provision of information.

We can also liaise directly with solicitors who are drawing up and submitting the application on your behalf. This can be particularly valuable in terms of negotiation in respect of timescales surrounding the provision of the MHO report, and ensuring that this ties in with the two medical reports. We will also discuss any other matters surrounding the application with you or your solicitor at the earliest opportunity, in order to avoid any preventable delays in the application process. For these reasons, we will ask you to provide contact details for your solicitor. While you are not obliged to tell us who your solicitor is, doing so could assist in securing a more swift and beneficial outcome for the adult.

Responding to Delays in the Application Process

Applying for guardianship is a process that can take several months. In many cases, this is not a significant concern, as the adult's welfare is already safeguarded, and he or she is living in appropriate circumstances, and in a suitable environment. There may be cases, however, when a delay in securing guardianship could undermine the welfare of an adult. In such cases, we will contact you or your solicitor to discuss any support that might be offered to progress the application.

Where three months have passed from WDCHCP becoming aware of the intention to apply, and there is no indication of the application process having advanced, we will arrange a meeting to discuss how to progress matters for the benefit of the adult. This meeting will be referred to as a *case conference*, and you will, of course, be

invited to attend, along with any other person who is deemed to have an interest in the welfare of the adult. You can also arrange for your solicitor to attend.

Case Conference

The case conference will consider all options to support you with progressing the guardianship application. In the event of such options not being available or appropriate, the meeting will explore whether WDCHCP should pursue an application in order to secure an appropriate outcome for the adult. The 2000 Act places a duty on local authorities to consider this option in certain circumstances. An application by the local authority is subject to the same scrutiny as a private application, and all interested parties are afforded the opportunity to have their views represented.

After a Private Guardianship Order is Granted

Supervising Officer

When the sheriff grants a private welfare guardianship order, the local authority will appoint an officer (usually a social worker) to supervise and support the guardian. The role of the supervising officer is to periodically meet (where possible) with the adult and guardian, with a view to supporting the guardian in undertaking the role, offering advice and guidance where appropriate. The supervising officer is required to maintain contact with the adult and guardian, at intervals not exceeding six months.

Further information regarding the role of the supervising officer can be accessed at the following internet links:

http://www.mwcscot.org.uk/media/51862/Supporting_Welfare_guardians.pdf

<http://www.wdchcp.org.uk/our-services/mental-health-officers/>

Further Information

If you require any further information, you can contact one of our Social Work area offices:

Dumbarton Area Team

6-14 Bridge Street
Dumbarton
G82 1NT

Monday to Thursday 08:45 – 16:45

Friday 08:45 – 15:55

Tel: 01389 737020

Fax: 01389 737022

Clydebank Area Team

Rosebery Place
Clydebank

Monday to Thursday 08:45 – 16:45

Friday 08:45 – 15:55

Tel: 0141 5628800

G81 1TG

Fax:

0141 5628899

Alexandria Area Team

4 Church Street

Alexandria

G83 0PN

Monday to Thursday 08:45 – 16:45

Friday 08:45 – 15:55

Tel: 01389 608080

Fax: 01389 608088

You can also obtain guidance and support from the following organisations:

Office of the Public Guardian (Scotland)

Hadrian House

Callendar Business Park

Callendar Road

Falkirk FK1 1XR

Enquiry line: 01324 678300

www.publicguardian-scotland.gov.uk

For information and advice about matters covered by the Act. The OPG's focus is primarily on financial matters. If they cannot assist directly with queries on other matters relating to adults with incapacity (e.g. welfare, health, and care) they will point you to other agencies that will be able to help. The OPG does not provide legal advice. All OPG publications, including forms and guidance notes can be downloaded. Hard copies are available on request.

Mental Welfare Commission for Scotland

Thistle House

91 Haymarket Terrace

Edinburgh EH12 5HE

0131 313 8777

Helpline: 0800 389 6809

www.mwcscot.org.uk

The Commission provides advice on welfare matters in relation to AWI and free good practice guides - see website for further information.

Scottish Government

Justice Directorate
Civil Law Division
Area 2W, St Andrew's House
Regent Road
Edinburgh EH1 3DG

Tel: 0131 244 3581

<http://www.scotland.gov.uk/topics/justice/civil/awi>

Adults with Incapacity Act Codes of Practice and other publications are listed on, and can be downloaded from, the website. Information about obtaining hard copies of these documents is available on the website or by calling 0131 244 3581.