

West Dunbartonshire Community & Health Care Partnership

Adults with Incapacity (Scotland) Act 2000 Procedures

Guidance Note

Applications for Welfare Guardianship: Timescales

Date Agreed: September 2013

Review Date: September 2015

West Dunbartonshire Community Health & Care Partnership

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Introduction

The Adults with Incapacity (Scotland) Act 2000 (hereafter referred to as the 2000 Act) established a series of functions, and a significant number of duties, that local authorities must adhere to. Prominent among these responsibilities, is the requirement to consider circumstances whereby the local authority should pursue an intervention in accordance with the principles of the legislation.

Codes of Practice have been produced to provide guidance in respect of the 2000 Act, but each local authority must also develop its own procedures, demonstrating that it acts in accordance with the legislation while taking account of specific features that are characteristic of the area in which it has jurisdiction.

West Dunbartonshire Community Health & Care Partnership (CHCP), which incorporates the relevant departments of West Dunbartonshire Council, is committed to ensuring that it discharges its duties under the terms of the 2000 Act in a manner that is wholly consistent with the underpinning principles. Central to this policy is recognition that any requirement to intervene in terms of the welfare and wellbeing of an adult who lacks capacity will have an associated, optimum timescale, during which such functions should be discharged, and an outcome secured.

This section of West Dunbartonshire CHCP 2000 Act Procedures is concerned with setting out timescales that will apply when it has become apparent that an intervention under the terms of the Act is required.

Guardianship & Intervention Orders

The guidance will be specifically concerned with guardianship and intervention orders. These measures represent the highest level of intervention, and as such, the decision to pursue an application will be taken when it is believed that there is no alternative option available. Accordingly, it will be assumed that there is a requirement to achieve an appropriate outcome for the adult at the earliest opportunity.

The guidance relates to both local authority applications, and those being made by private individuals. Process timescales relating to local authority applications will be considered initially, while private applications will be referred to later in the guidance.

Local Authority Applications:

This section should be read in conjunction with Part 1 of the procedures.

For the purposes of the current guidance, the focus will be on guardianship orders, as this is the most frequently pursued form of intervention. An application for an intervention order can accompany this, and the following guidance will also apply where the sole measure sought is an intervention order.

Section 57(2) of the 2000 states that:

Where it appears to the local authority that—

(a) the conditions mentioned in section 58(1) (a) and (b) apply to the adult; and

(b) no application has been made or is likely to be made for an order under this section; and

(c) a guardianship order is necessary for the protection of the property, financial affairs or personal welfare of the adult,

they shall apply under this section for an order.

The decision to apply for an order is taken at the conclusion of a formal case conference. Prior to convening a case conference, a number of stages will have been reached, and the guidance will apply from the point at which initial consideration is given to the option of pursuing a guardianship and/or intervention order under the terms of the 2000 Act. This stage will usually follow the completion of a comprehensive assessment. For the purposes of the guidance, this will therefore be considered as *Stage 1*, which each proceeding stage numbered accordingly, up to and including the point at which the application is submitted to the Sheriff Court.

The **key stages** will be as follows:

Stage 1: Comprehensive Assessment completed by allocated key professional;

Stage 2: A multi-disciplinary case discussion/review is arranged to consider appropriate options, including measures under the 2000 Act;

Stage 3: A formal case conference is convened to specifically reach a decision as to whether an application for guardianship should be pursued by the local authority;

Stage 4: Where the decision is made to pursue an intervention, the process of completing the summary application, Mental Health Officer report, and requesting the relevant medical reports commences

Stage 5: The completed application is submitted to the Sheriff Court.

The above key stages will consist of several component tasks, and, where appropriate, a timescale will be provided.

Stage 1: Assessment

A comprehensive assessment will be completed within a timescale that is in accordance with local authority policy. Where it is considered, in consultation with relevant line management structures, that measures under the 2000 Act might be required, **a multi-disciplinary case discussion will be convened within 10 working days.**

Stage 2: Case Discussion

The case discussion need not be delayed unduly, as a decision to proceed to case conference will afford the opportunity for further investigation if required, and for relevant parties who are unable to attend the case discussion, to contribute as appropriate.

In the event of a decision to proceed to a formal case conference, this will take place within 20 working days

Stage 3: Case Conference

There is a requirement for a 20 working day period in which to arrange the case conference on a number of key grounds:

- The Adult and other interested parties (carers/family members etc.) must be afforded a reasonable time frame in which to consider their position in respect of a possible intervention, and to seek legal advice etc.;
- Provision of independent advocacy services as appropriate;
- To enable a full assessment of capacity to take place if this has not previously been completed;
- An initial assessment by a Mental Health Officer (MHO) as appropriate;
- Sufficient notice to afford the opportunity for all relevant parties to attend or submit representations in writing (or verbally as appropriate). This is a critical aspect of arranging a case conference, as the decision that is made should be informed by thorough consideration of all available information, and having sought the views of all relevant parties where possible. Failure to adequately address this requirement could result in the application being deemed incompetent.

There will, of course, be circumstances whereby it will be necessary and appropriate to convene a case conference within a significantly shorter timescale. This will usually be due to a greater level of urgency, but it must be possible to justify this

position if a consequence is that relevant interested parties have been unable to attend/contribute.

It is also preferable that the case conference can reach a definitive position as opposed to there being the requirement to defer making a decision due to an absence of representation and/or information.

Stage 4: Application Process

The process for preparing and submitting an application consists of the completion of the summary application and provision of 3 reports as prescribed. This requires a significant degree of co-ordination, and can be complicated by a number of variables.

An agreed protocol exists whereby Legal Services of West Dunbartonshire Council prepare a draft summary application in the first instance. This draft will largely be based on comprehensive assessment documentation (most often as Single Shared Assessment completed by the care manager/key worker) and the minutes of the case discussion and case conference. As the case conference minute is central to this process, early provision of this document is important. Therefore, this will be the initial component task to consider:

- a) Following the case conference, completion and distribution of **case conference minute to be arranged within 5 working days.**

- b) **It is the responsibility of the Senior Social Worker responsible for the case to ensure that a medical report from a Section 22 (2003 Act) Approved Medical Practitioner and another doctor (usually the adult's General Practitioner (GP)) is formally requested and to forward the completed reports to West Dunbartonshire Council Legal Services.** The Senior Social Worker should decide when it is most appropriate to request the reports based on the overall progress of the application process. It is generally advisable to request the reports at an early stage in the process, perhaps when the minute is distributed. The Senior Social Worker is responsible for securing safe receipt of the medical reports and forwarding these timeously to West Dunbartonshire Council Legal Services, and should not delay in checking on the progress of the referral as appropriate.

- c) **Where possible, the local authority solicitor will complete the draft application within 5 working days of receipt of the medical reports** (it is often necessary to consult the care manager and other relevant parties in

terms of securing accurate information, but the essential key information to enable the MHO to commence the process of preparing his/her report is usually sufficient, so it should not be necessary to delay forwarding the draft unduly);

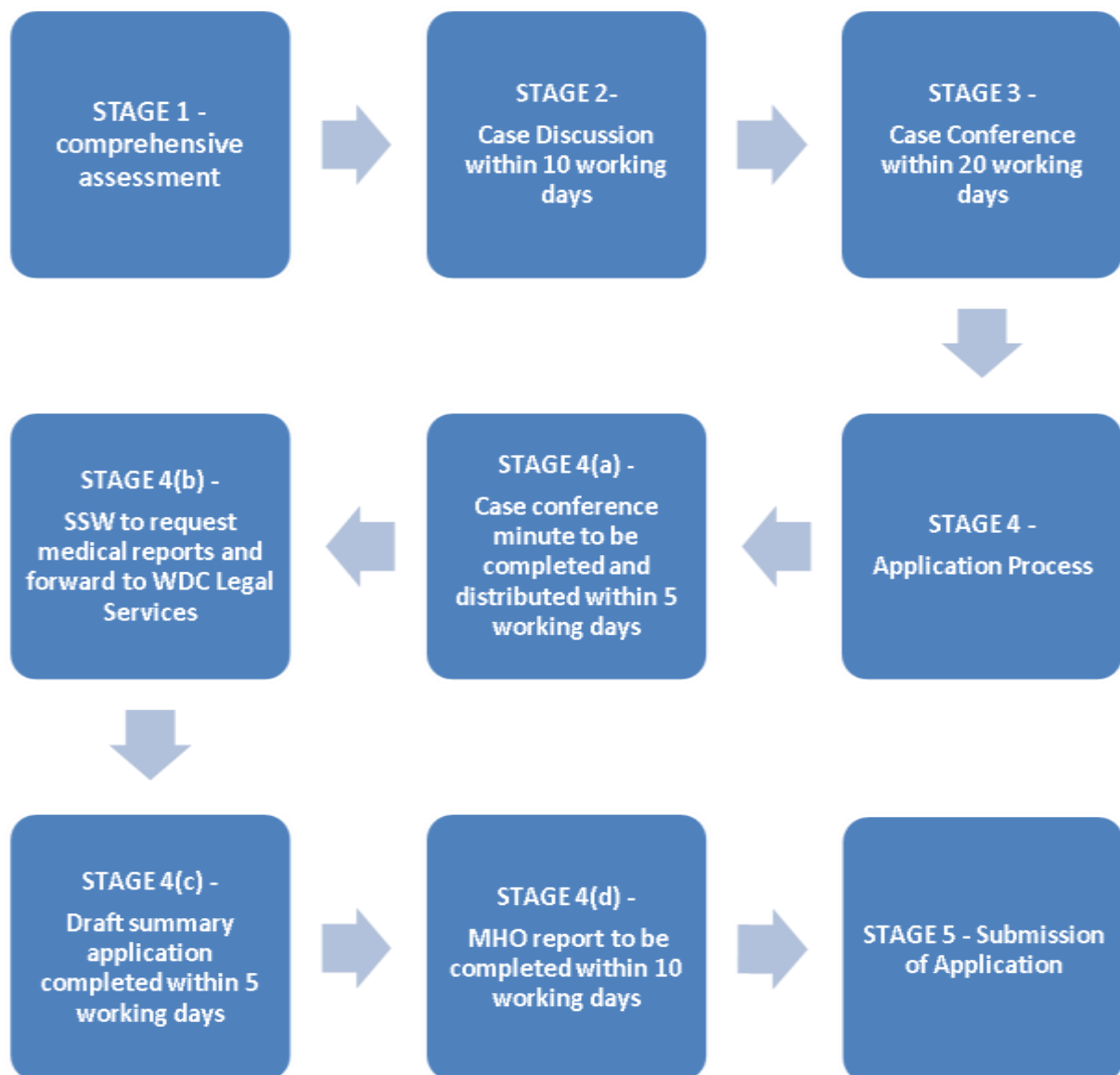
- d) **Where possible, the responsible MHO will return the completed MHO report to the local authority solicitor within 10 working days of having received the draft summary application.** The MHO report is a comprehensive and complex document. The report is in prescribed form, and the MHO must ensure that all relevant sections are completed satisfactorily. The MHO is required to ascertain and represent the views of the adult and all relevant parties, including carers, family members, formal care providers, and other professionals. This can result in the requirement to arrange a significant number of interviews – for example, the adult may have a large immediate family, and given the expectation that all interested parties are afforded the opportunity to express their views, this can be a labour and time-intensive process which may not be possible to conclude within 10 working days.

Stage 5: Submission of Application

As soon as the local authority solicitor has received all relevant reports, it should be possible to lodge the application at the Sheriff Court without significant delay, and in accordance with hearing date availability.

In certain circumstances, it will be appropriate to request that the Sheriff grant an interim order. This option will usually have been discussed during the case conference, but an Adult's circumstances may change with the consequence that it is necessary to consider this provision during the process of preparing the application. The solicitor must be made aware of any developments that might prompt such a course of action.

Local Authority Application Timescales in Summary



Private Welfare Guardianship Applications

A significant majority of welfare guardianship applications are submitted by private individuals. Most often, one or more members of the Adult's family will apply to become welfare guardian(s) with the assistance of a solicitor.

The local authority does, however, have a significant role in terms of private applications. The most prominent function is the completion of an MHO report that will accompany the summary application and two medical reports. The 2000 Act prescribes that the local authority has a period of 21 days to complete and forward the report to the applicant.

Further to the provision of an MHO report, however, the local authority also has an important function in terms of the provision of information and support to carers, family members, or any other person claiming an interest, who might be considering applying for guardianship.

Leaflet: 'Are You Applying for Guardianship?'

West Dunbartonshire CHCP has produced a leaflet that should be given to any person whom it is understood might apply for guardianship. This leaflet provides key information regarding the role of the local authority in this context, highlighting the availability of support, and aspects such as the requirement for the MHO 'suitability' report, and the role of the *supervising officer* in the event that a welfare guardianship order is granted.

The leaflet will also explain that the Adult's care manager/key worker will request the contact details of any solicitor involved in the preparation of an application. The purpose for requesting this information is to facilitate early contact with a view to co-ordinating the application process given the requirement for the MHO report, and possible care management considerations that should be taken into account (for example, it might be helpful to discuss the option of pursuing an interim order).

The Adult's care manager/key worker or another designated officer of the CHCP will liaise with the solicitor as appropriate, in terms of facilitating the progress of the application. This is a particularly important function where statutory measures would be required to progress the care plan. An example of when this liaison would be desirable is the situation whereby the Adult remains in hospital while discharge to a care placement is appropriate, but it is not possible to progress this on an informal (or voluntary) basis.

Potential Delays

It must be acknowledged that the process of preparing a private 2000 Act application can become protracted. A number of factors can have a bearing in this respect, including: applying to the Scottish Legal Aid Board for funding assistance; securing agreement between family members; obtaining the required medical reports; amending the terms of the original application. It is often the case that any delays encountered are out with the control of the applicant, but it is, nevertheless, important to establish, where possible, what support the local authority might be in a position to offer.

Delays in progressing an application can be detrimental to the welfare of the Adult, and, as such, the local authority must consider the duty that the 2000 Act places upon it to consider making an application in certain circumstances. If it appears that a private application is not progressing in a manner that would be considered to be in the best interest of the Adult, and liaison with the applicant and/or his or her representative has not proven beneficial in expediting matters, further action might be required.

Local Authority's Requirement to Act

If, after a period of three months from it becoming apparent that a private application is being pursued, there is no indication that the matter is progressing and the Adult's welfare is potentially compromised as a result, the local authority will issue a letter to the applicant and his or her representative as appropriate. The letter will explain that a case conference has been arranged to consider the circumstances of the case, including the option of the local authority pursuing an application if required. The leaflet referred to above will have made reference to this provision of the West Dunbartonshire CHCP procedures, highlighting the supportive ethos underpinning the approach. All interested parties will be invited to attend the case conference.

The case conference will consider all relevant matters and options*, and if deemed necessary and appropriate, the decision may be that the local authority pursues an application for guardianship. The reasons for this decision will be fully recorded, and the process – with associated timescales – for preparing and submitting an application will be fully adhered to.

*other options might include the provision of additional support to the applicant; a further period of monitoring; an alternative measure to safeguard the welfare of the Adult.

Private Guardianship Application with Local Authority Intervention Summary:



