

Standard Operating Procedure

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SOP Reference No 1	For: Social Work staff.	Hospital & Community Settings	Date	30/07/24 Review Date Dec 2024
<p>Reason/background for SOP</p> <p>To support social work staff in monitoring and guiding people who express an interest in applying for private welfare guardianship, in respect of an adult who has been assessed as lacking capacity to manage their welfare and/ or financial affairs.</p> <p>Private welfare guardianship applications generally take at least 4-6 weeks longer than a Local Authority application, due to time that is required to identify a solicitor, submit a legal aid application, agree between family/ friends as to who should make an application/ become welfare guardian(s)/ financial guardian(s).</p> <p>The purpose of this S.O.P is to provide helpful guidance and support to staff to guide private individuals, without providing legal advice, but ensuring social work staff maintain an oversight of the legal process and agree realistic timescales for the application process, to prevent unnecessary delays in hospital and in respect of community care planning.</p>				

Step	Operating Step
1.	Are there concerns about the adult's capacity to make welfare and/ or financial decisions? Has the MDT formed a view or has a Dr undertaken an assessment of the adult's capacity to make decisions in relation to their welfare and/ or finances? (A S47 certificate is not an assessment of capacity.)
2.	<p>The adult's legal status should be ascertained, within first 3 days of admission (if in hospital) or early in the assessment process. i.e. has the adult appointed a legal proxy e.g. an Attorney(s), in relation to welfare and/ or finance (Continuing Attorney) or is there a welfare Guardian appointed, or an Intervener with welfare powers?</p> <p>If there is an Attorney(s)/ Guardian(s), they should be asked to provide a copy of the legal document, including the powers granted, which must be documented in;</p> <ul style="list-style-type: none"> ➤ the adult's electronic SW file and CareFirst record, ➤ the patient's medical notes (if in hospital).

	<p>➤ If the adult is in the community, seek permission to share with G.P.</p> <p>If a copy of the legal document is not forthcoming or cannot be provided, then checks re: legal status should be made via the Mental Health Officer Service, which is the authorised link with the Office of the Public Guardian, Scotland.</p> <p>Email: HSCMHO.Managers@highland.gov.uk or Phone: 01463 702 156.</p> <p>**Please do not record that there is a legal proxy(s) unless the legal order has been confirmed and a copy of the document has been provided**</p> <p>If there is a legal proxy, please record on CareFirst. (Please see 'SOP – AWI & CareFirst Recording' to record legal classification.) SOP - AWI & CareFirst Recording</p>
3	<p>If there is no legal proxy and the adult has been assessed as lacking capacity to make welfare decisions, and it has been agreed that legal measures are necessary, then this should be conveyed to the family at the earliest opportunity and summary of discussion recorded on CareFirst observations.</p> <p>NB: Consideration should be given to the appropriateness of S13ZA of the Social Work (Scotland) Act 1968. See S.O.P: S13ZA</p>
4	<p>If a family member(s) or person(s) with an interest in the adult's welfare indicates a wish to make an application for private welfare guardianship, then the following information should be provided.</p> <ul style="list-style-type: none"> ➤ All private applications for welfare guardianship are eligible for legal aid, which is not means tested. ➤ Provide the person(s) with 'List of Legal Aid Solicitors – Highland' (April 2024), see attached list) or direct them to; ➤ www.slabb.org.uk (Scottish Legal Aid Board - Solicitors) & https://www.publicguardian-scotland.gov.uk for information about Guardianship applications. ➤ Provide the person(s) with the contact information for the allocated social work team member, or allocated local SW team, or the In-Reach Social Work Team at nhsh.hospitalinreachsocialwork@nhs.scot ➤ They should be asked to provide the name and address of their solicitor within 10 working days of this initial discussion, in writing. This discussion and agreed timescales should be recorded in the patient's notes (if in hospital) and in social work records. ➤ They should be asked for their consent for the social work member of staff to liaise with their solicitor regarding the progress of the application. ➤ If after this time, they choose not to pursue legal measures, they should inform the allocated social worker or social work assistant practitioner, who should then arrange/seek an AWI case conference as soon as possible. (Please see S.O.P - AWI

	Case Conferences)				
5	The adult’s views and preferences, and the views of any relevant others, regarding the adult’s care and support needs, should be ascertained and recorded throughout the hospital admission, and also in relation to an adult in the community.				
6	A referral should be made to Independent Advocacy to support the adult to express their views, will and preferences.				
7	Social work staff should consider whether S13ZA of the Social Work (Scotland) Act 1968 is applicable, in line with the Social Work S13ZA procedures. If applicable, this can be considered if no Guardianship application has been lodged in Court. E.g. a person could transfer to the care home of their choice, if all criteria for the application of S13ZA are met, then a PWG order can be progressed to provide ongoing decision-making authority in respect of the Adult.				
8	Finally, following receipt of a letter from Scottish Government and COSLA, dated 8/12/22, if the family have <u>not</u> engaged a solicitor within <u>5 weeks</u> , and legal measures are believed to be required, then AWI procedures should be followed and a LAWG application should be pursued. This is guidance provided in relation to adults who are delayed in hospital. However, if there is no evidence that family have engaged a solicitor, the 10-day window has passed, and perhaps they are not engaging/ communicating with the social work team, the allocated worker should discuss the situation with the SW Team Manager and agree a timeframe, which is relevant to the situation, taking into account any mitigating factors. If it is agreed legal intervention is likely to be required, arrange an AWI case conference to discuss this further. (Please follow S.O.P - AWI Case Conferences)				
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LIST OF LEGAL AID SOLICITORS – HIGHLAND (APRIL 2024)

Scottish Legal Aid Board

www.slab.org.uk (for full list see website)

INVERNESS

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Address	28 Queensgate, Inverness, IV1 1DJ
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