

Standard Operating Procedure

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SOP Reference No 1	For: Health & Social Work staff involved in hospital admission and discharge planning.	Date	July 2024 Review Date Dec 2024

Reason for S.O.P

This S.O.P aims to guide and support health and adult social work staff to understand the importance of clarifying a patient's capacity to make decisions in respect of their treatment, care and ongoing welfare upon admission, and to ensure the appropriate legal framework has been considered, where necessary, to facilitate their safe and legal discharge.

A **Section 47** certificate of incapacity for the provision of medical treatment is required where the patient is unable to consent to the proposed medical care and treatment in hospital or when receiving ongoing treatment in the community. (e.g. regular medication, administered by care providers). See MWC guidance: https://www.mwscot.org.uk/sites/default/files/2021-04/TreatmentUnderSection47oftheAdultsWithIncapacityAct_April2021.pdf

A S47 certificate does not provide legal authority to facilitate the patient's discharge or enact a Power of Attorney document, nor can it be used to evidence incapacity in terms of pursuing an application for Welfare/ Financial Guardianship.

Capacity is decision specific, and will vary during the patient's admission, alongside their changing medical and care needs. Assessment of the patient's capacity in relation to their ongoing care, treatment and welfare, and to prepare for discharge, will be undertaken by the Dr overseeing their care. This will encompass assessments and information from the M.D.T, informing the Dr of the areas of decision making the patient requires support. The [Decision Specific Screening Tool](#) can be used to support this assessment process, by providing an indicator of the areas of decision making that the adult may require support. The tool can support a request for a formal assessment of capacity.

All members of the MDT are responsible for monitoring and recording the patient's physical and mental health progress to inform these assessments.

Background for S.O.P

The Mental Welfare Commission Report [Authority to Discharge](#) highlighted significant concerns about illegal and inappropriate discharges of patients who lacked capacity.

If a patient lacks capacity to make decisions regarding their welfare, they cannot be discharged from hospital until the appropriate checks, assessments and legal authority for the move has been considered. Adult social work services are best placed to undertake these checks and progress any necessary steps to facilitate the safe, legal discharge of the patient (e.g. S13ZA). An early referral to Social Work Services is recommended.

If there is no legal authority in place, the patient cannot be discharged to a registered care home. They can only be transferred between NHS hospitals or discharged home, following a robust MDT risk assessment, care planning and supported decision-making process, with all parties in agreement, including the patient and any relevant others. This should always be clearly documented.

It is essential that as an organisation, we comply with legislative frameworks that underpin health and social work practice. If there are concerns about a patient's capacity, their understanding and ability to make decisions, then the following steps should be undertaken to determine what legal framework is appropriate.

Step	Operating Step
1.	<p>Ascertain the patient's legal status (normally within first 3 days of admission) i.e. has the adult appointed an Attorney(s) in relation to welfare decisions or is there a welfare guardian appointed?</p> <p>Checks re legal status should be made via the Highland MHO service, as the authorised link with the Office of the Public Guardian, Scotland. Call: 01463 702 156 or email: HSCMHO.managers@highland.gov.uk</p> <p>A copy of the registered document should be obtained, and the powers granted established. Determine whether any trigger for the use of the powers has been met.</p> <p>A copy of the legal order, contact details of the proxy and powers held should be recorded in the patient's notes, in the client's electronic social work file and recorded on CareFirst. A copy of the order should be saved on SCI Store. (Social Work staff please see - S.O.P – AWI CareFirst Recording)</p>
2.	<p>Where a patient is assessed to lack capacity to give consent to medical treatment, a S47 certificate of incapacity for the provision of medical treatment MUST be undertaken and be visible in the patient's notes. This is time limited and should be kept under review by medical staff. See S47 link to guidance.</p> <p>https://www.gov.scot/publications/section-47-certificate</p>
3.	<p>The patient's views and those of any relevant others should be ascertained in relation to the patient's care and support needs throughout their hospital admission. These should be clearly recorded in the patient's notes and in social work records.</p>
4.	<p>The social worker or social work assistant practitioner, or the lead professional (if SW not yet involved), in consultation with the wider MDT, should form a preliminary view of capacity of the adult to give consent to the proposed care plan. The Decision Specific Screening Tool will support and inform greater understanding of the adult's decision-making ability.</p>
5.	<p>If concerns are raised regarding the patient's capacity, then the Doctor who is responsible for the patient's care and treatment, should detail in the patient's notes, the areas in which the adult is incapable in relation to their welfare and/ or financial decision- making ability.</p> <p>(Please see definition of 'incapable' in Notes at end of this document.)</p> <p>https://www.gov.scot/publications/adults-incapacity-scotland-act-2000-communication-assessing-capacity-guide-social-work-health-care-staff/</p> <p>Information from the MDT assessments should support and inform the Doctor's assessment of capacity, detailing the areas of risk and need. If a more detailed assessment of capacity is required, then the patient should be referred onto an appropriate clinician for a comprehensive assessment of capacity. (The Decision Specific Screening Tool can be utilised to support this referral.)</p>
6.	<p>Following assessment of the patient's care and support needs, if a care home placement is required, consideration should be given to whether S13ZA of the Social Work (Scotland) Act 1968 is appropriate. The patient and all relevant parties should be consulted; including Legal services and the MHO service, and all should agree to the proposed care plan. This is a Social Work process and</p>

	can only be agreed if the S13ZA criteria are met and authorised by the Social Work Team Manager. (Please see: S.O.P – S13ZA and complete the Section 13ZA Checklist .)				
8	If S13ZA is not applicable, the social worker or social work assistant practitioner should ascertain from any relevant others/ family whether they would wish to seek legal authority to make decisions on behalf of the adult.				
9	If the family express an interest in seeking a private application for Guardianship, an MDT case discussion should be held with family/ relevant others, so everyone is clear what actions are being pursued and a timeframe agreed, as detailed below. See: S.O.P – Private Welfare Guardianship .				
10	<p>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’ (June 2024, see attached list) or direct them to; ➤ www.slab.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 worker, social work assistant practitioner or 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/ MDT, in writing. This discussion and agreed timescales should be recorded in the patient’s notes and in social work records. ➤ They should be asked for their consent for the allocated social worker/social work assistant practitioner/ team to liaise with their solicitor regarding the application process. ➤ Health colleagues – Please refer to the local Social Work team if a private individual expresses interest in applying for private welfare guardianship so the above monitoring and support can be undertaken. 				
11	If the family advise they have instructed their solicitor to pursue an application, the social worker or social work assistant practitioner should maintain regular (min weekly) contact with the family member(s) to support them, answer any queries and monitor the application progress with their solicitor.				
12	If the family do not wish to pursue a private application and legal measures need to be considered, the social worker or social work assistant practitioner should arrange an AWI case conference to discuss whether a LA application under the AWI legislation is required. (Social Work staff please see S.O.P - AWI Case Conferences)				
13	As per, Scottish Government & COSLA guidance, dated 8/12/22, if the family have not engaged a solicitor within <u>5 weeks</u> , and legal measures are required, then AWI procedures should be followed and a LAWG application should be pursued.				
Author	Date	Approved for Use by	Date	Review Date	Responsibility
Catriona Grant	30/7/2024	Ian Thomson	28/8/24	Dec 2024	Catriona Grant

NOTES:

The Adults with Incapacity (Scotland) Act 2000, defines an Adult as someone who has reached the age of 16 years, and “incapable” as someone who is incapable of –

- (a) acting; or
- (b) making decisions; or
- (c) communicating decisions; or
- (d) understanding decisions; or
- (e) retaining the memory of decisions

What incapacity means under the Act - The Act recognises that a person may be legally capable of some decisions and actions and not capable of others. The Act says that a person lacks capacity to take a particular decision or action when there is evidence that he/she is unable to do so.

Glossary:

MWC - Mental Welfare Commission

ASW & ASC – Adult Social Work & Adult Social Care Team

SWD – Social Work Department

MDT – Multi-disciplinary Team

S13ZA – Section 13ZA of the Social Work (Scotland) Act 1968

S47 – Section 47 certificate of incapacity for the provision of medical treatment.

LIST OF LEGAL AID SOLICITORS – HIGHLAND (June 2024)

Scottish Legal Aid Board | www.slab.org.uk (for full current list)

INVERNESS

Cameron Clyde Legal Ltd

Address	Kintail House, Beechwood Business Park, Inverness, IV2 3BW
Website	https://cameronclyde.co.uk/
E-mail	court@cameronclyde.co.uk
Tel No.	01463 513789

Grey & Co Solicitors Ltd

Address	1 st Floor, 46 Church Street, Inverness, IV1 1EH
Website	https://www.greyandcosolicitors.co.uk/
E-mail	info@greyandcosolicitors.co.uk
Tel No.	01463 239011

Innes & Mackay Solicitors

Address	Kintail House, Beechwood Business Park, Inverness, IV2 3BW
Website	https://www.innesmackay.com
E-mail	reception@innesmackay.com
Tel No.	01463 232273

Civil Legal Assistance Office

Address	2 Castle Wynd, Inverness. IV2 3EB
Website	https://www.clao.org.uk
E-mail	inverness@clao.org.uk
Tel No.	01463 541 770

MacLeod & MacCallum Solicitors

Address	28 Queensgate, Inverness, IV1 1DJ
Website	https://www.macandmac.co.uk/
E-mail	court@macandmac.co.uk
Tel No.	01463 239393

South Forrest Solicitors

Address	8 Ardross Terrace, Inverness, IV3 5NW
Website	https://www.southforrest.co.uk/
E-mail	email@southforrest.co.uk
Tel No.	01463 237171

The Mackenzie Law Practice

Address	2 nd Floor, Highland Rail House, Station Square, Inverness. IV1 1LE
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CAITHNESS**Drever & Heddle LLP**

Address	7/9 Princes Street, Thurso, Caithness, KW14 7BQ
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Young Robertson & Co Solicitors

Address	29 Traill Street, Thurso, KW14 8EG
Website	https://youngrobertson.co.uk/
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Tel No.	01847 893247

ROSS & CROMARTY**CDA Law**

Address	Alton House, 4 Ballifeary Road, Inverness.
Website	http://www.cdalaw.co.uk
E-mail	chris@cdalaw.co.uk
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LOCHABER**McIntyre & Co Solicitors**

Address	38 High Street, Fort William, PH33 6AT
Website	https://www.solicitors-scotland.com/
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MacPhee & Partners LLP

Address	Airds House, An Aird, Fort William, PH33 6BL
Website	https://www.macphee.co.uk/
E-mail	law@macphee.co.uk
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MORAY**Grigor & Young LLP**

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