



**mental welfare**  
commission for scotland

# Legal aid for welfare guardianship

Advice notes

---

2021



# Our mission and purpose

## Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

## Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

## Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

## Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

## Legal Aid for Welfare Guardianship

In Scotland, provided an application is for a welfare, or financial and welfare, guardianship order, the Scottish Legal Aid Board (SLAB) does not look at the financial circumstances of the adult who has lost capacity, or of the proposed guardian or guardians.

The Commission considers that the adult should have a right to legal representation in order to challenge any deprivation of liberty. We had heard of a case where this was refused, and we have been in discussion with SLAB about civil legal aid for an adult who wishes to challenge a welfare guardianship application.

Generally speaking SLAB agrees that where an adult is facing a deprivation of liberty they should have legal aid if they wish to challenge any aspect of an order being sought. In such circumstances legal aid will normally be granted. A refusal when facing a removal of liberty would be exceptionally unusual and SLAB would almost always be sympathetic to applications for legal aid in such circumstances.

We wish to hear of any case where anyone is denied free legal aid to be represented at a hearing to determine a welfare guardianship application.



Mental Welfare Commission for Scotland  
Thistle House,  
91 Haymarket Terrace,  
Edinburgh,  
EH12 5HE  
Tel: 0131 313 8777  
Fax: 0131 313 8778  
Freephone: 0800 389 6809  
[mwc.enquiries@nhs.scot](mailto:mwc.enquiries@nhs.scot)  
[www.mwscot.org.uk](http://www.mwscot.org.uk)  
Mental Welfare Commission 2021