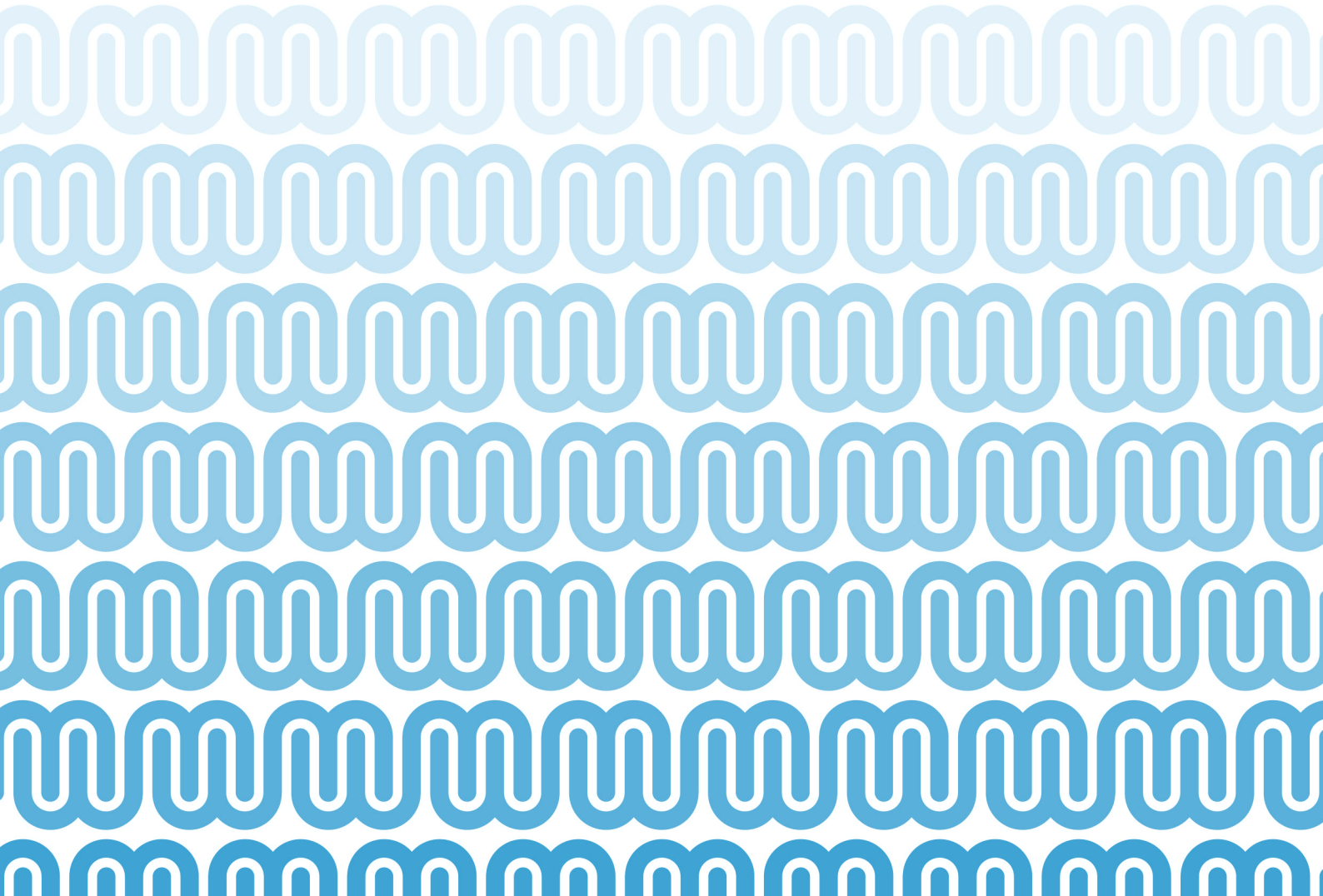
mental welfare commission for scotland

Adults With Incapacity Act monitoring report 2022-23

Statistical monitoring

December 2023



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

Contents

Summary and key findings

The Mental Welfare Commission for Scotland ('the Commission') has safeguarding duties in relation to people who are subject to the protection of the Adults with Incapacity (Scotland) Act 2000 (the AWI Act) [1]. This duty includes monitoring the use of welfare guardianship orders for adults with a mental illness, learning disability, dementia and related conditions, to determine how and for whom the AWI Act is being used. This helps us to inform policy and practice.

We report our function in monitoring the use of the AWI Act in two parts:

1) statistical monitoring of extant (existing) and granted guardianships; and
2) visits to individuals on guardianship orders to ensure their rights are upheld.

Key findings

Part one: statistical monitoring 2022-2023

- There was a total of 17,849 individuals subject to a guardianship order in Scotland on 31 March 2023 compared to 17,101 in 2022.
- A total of 3,501 guardianship orders were granted in 2022-23, 2.9% more than in 2021-22.
- 94.7% of guardianship orders granted in 2022-23 were new orders while 5.3% were renewals of existing guardianship orders.
- Private guardianship orders accounted for 71.8% of all guardianships granted, similar to previous years.
- The most common primary diagnosis was learning disability (46.0%), and dementia (36.7%), similar to last year.
- 81.5% of the granted orders were for a period of five years or less (compared to 80% last year). 14.9% were for six years or longer (lower than last year's figure of 16%) and 3.6% were indefinite orders.
- In 2022-23, there were 30 requests for a section 48 visit by a doctor appointed by the Commission for which 25 visits took place, lower than 2021-22 figures (39 requests and 33 visits). For both requests and visits, the majority were for electro-convulsive therapy (ECT).
- There were fewer than five requests for an independent second opinion doctor visit under section 50 of the Act.

Part two: guardianship visits 2022-23

- In 2022-23 we visited 205 adults subject to welfare guardianship orders.
- Our target is to undertake 350 guardianship visits throughout the year however re-prioritisation of work following the pandemic reduced this and we achieved 71% of our annual visit target.
- 98.1% of our visits were undertaken in person.
- 77.6% were routine visits and 17.6% were due to concerns that had been raised.
- In 62% of our visits, we provided advice or undertook further actions.
- Of the 106 individuals we visited who were on a private guardianship order, 59.4% had a local authority supervising officer allocated at the time we visited.

Introduction

What are welfare powers of attorney and guardianship orders?

The Adults with Incapacity (Scotland) Act 2000 (AWI Act)[1] introduced a system for safeguarding the welfare and managing the property and finances of people who lack capacity to act, or to make some or all decisions for themselves due to a mental illness, learning disability, dementia or related conditions. This system allows other people, called guardians or attorneys, to make decisions on behalf of those who lack capacity, subject to safeguards.

When a person has capacity they can grant a power of attorney (POA) to someone to act on their behalf. Whilst a person with capacity can allow someone to manage their finances via a power of attorney, welfare powers of attorney can only be used if the person does not have the capacity to make the specific decisions themselves. Sometimes the person's solicitor will write a specific clause in the power of attorney document ensuring that this will be determined by a medical practitioner. Other documents may not have such clarity and are left to be determined by the proxy decision maker (attorney). The Commission would suggest the former is the better option, as the level of incapacity is then determined by an independent person.

When a person no longer has capacity, and has no pre-existing POA, an application may be made to the court and the sheriff may appoint a welfare guardian as proxy decision maker. The welfare guardian is then involved in making key decisions concerning the person's personal and medical care. Decisions by attorneys or guardians should always be in line with the principles of the AWI Act (see Box 1).

The majority of guardians are private individuals, usually a relative, carer or a friend. These are known as private guardians. The court can also appoint the chief social work officer (CSWO) of a local authority to be the person's welfare guardian, especially if private individuals do not wish to or are not able to take on the role as guardian. This is known as a local authority guardianship order.

Under the AWI Act, local authorities have a duty to make an application for welfare guardianship orders where it is required and where no one else is applying. Local authorities also have a duty under the AWI Act to support and supervise all welfare guardians, and to visit the person and their guardian at regular intervals. In addition, local authorities can investigate issues relating to the welfare of an adult where a proxy decision maker (guardian or attorney) exists and there are welfare concerns (under section 10(1) of the AWI Act)[1].

Box 1. Principles of AWI legislation

Principle 1 – Benefit
Any action or decision taken must benefit the person, and only be taken when that benefit cannot reasonably be achieved without it.

Principle 2 – Least-restrictive option
Any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.

Principle 3 – Take account of the wishes of the person
In deciding if an action or decision is to be made, and what that should be, account must be taken of the present and past wishes and feelings of the person as far as these may be understood. Some adults will be able to express their wishes and feelings clearly, although they would not be capable of taking the action or decision which you are considering. For example, they may continue to have opinions about a particular item of household expenditure, without being able to carry out the transaction personally. The person must be offered help to communicate their views. This might mean using memory aids, pictures, non-verbal communication, advice from a speech and language therapist, or support from an independent advocate.

Principle 4 – Consultation with relevant others
Take account of the views of others with an interest in the person's welfare. The AWI Act lists those who should be consulted whenever practicable and reasonable. It includes the person's primary carer, nearest relative, named person, attorney, or guardian, if there is one.

Principle 5 – Encourage the person to use existing skills and develop new skills
Encouraging and allowing the adult to make their own decisions and manage their own affairs and, as much as possible, to develop the skills needed to do so.

The role of the Mental Welfare Commission

The Mental Welfare Commission for Scotland ('the Commission') is part of the framework of legal safeguards in place to protect the rights of people subject to welfare guardianship orders, intervention orders and powers of attorney (POA). We monitor the use of the welfare provisions of the AWI Act. We also monitor the use of Part 5 of the AWI Act relating to consent to medical treatment and research.

The Commission receives a copy of every application for a welfare guardianship order, including the powers sought, medical and mental health officer (MHO) assessments, and a copy of the order granted by the sheriff. We collate and analyse data compiled from the relevant paperwork provided to us and publish monitoring reports, such as this one, with comment and analysis of trends in the use of the Act; the statistical monitoring is covered in Part 1 of this report.

One of the best ways to check that people are getting the care and treatment they need is to meet with them and ask them what they (and important people to them) think. We therefore visit people who are subject to guardianship orders in whatever setting they live and provide advice and good practice guidance on the operation of the AWI Act as part of our casework function. Our visits may lead to further inquiries or investigations, where indicated, to protect

and promote the rights of the person. In 2022-23 we returned to our full visiting programme and report the detail of visits in Part 2 of this report.

This report

This report relates to the period 1 April 2022 - 31 March 2023. The first part of this report looks at the data and trends of existing and new guardianship orders in Scotland. Monitoring these trends helps to inform policy and practice. The second part of this report provides information about the work that the Commission undertakes when it visits people subject to guardianship orders.

Our data

When an application is made to a sheriff and a guardianship order is granted, the Commission is sent a record which is stored on our database. We report on the last year's number of granted guardianship orders for the period 1 April to 31 March. This year's report concerns all granted guardianship orders from 1 April 2022- 31 March 2023 and where appropriate, trends from 2013-14 onwards are presented. We also report on extant or existing guardianship orders, which includes all individuals in Scotland who were subject to a guardianship order on 31 March 2023.

We are particularly interested in understanding the context and characteristics of the guardianship orders and our analyses therefore focus on:

a) demographic characteristics (age, gender, diagnosis);
b) guardianship status (new or renewed order);
c) guardian type (private or local authority); and
d) length of guardianship order. At this point in time, we are not able to report on ethnicity as this information is not gathered in current applications to court.

We follow Public Health Scotland standards on data disclosure, as data relating to mental health and vulnerable populations is considered sensitive[2]. Measures to prevent identification are therefore taken and we supress numbers of less than five where needed and employ secondary suppression if some figures can be calculated from totals.

All percentages throughout the report have been rounded to one decimal place and in places the total may therefore not add up to 100%. Rate per 100,000 population were calculated using mid-2021 population statistics from National Records Scotland for the population aged ≥16 years as these were the latest available figures at time of writing [3].

PART 1 – Adults with Incapacity Act statistical monitoring

Extant guardianships

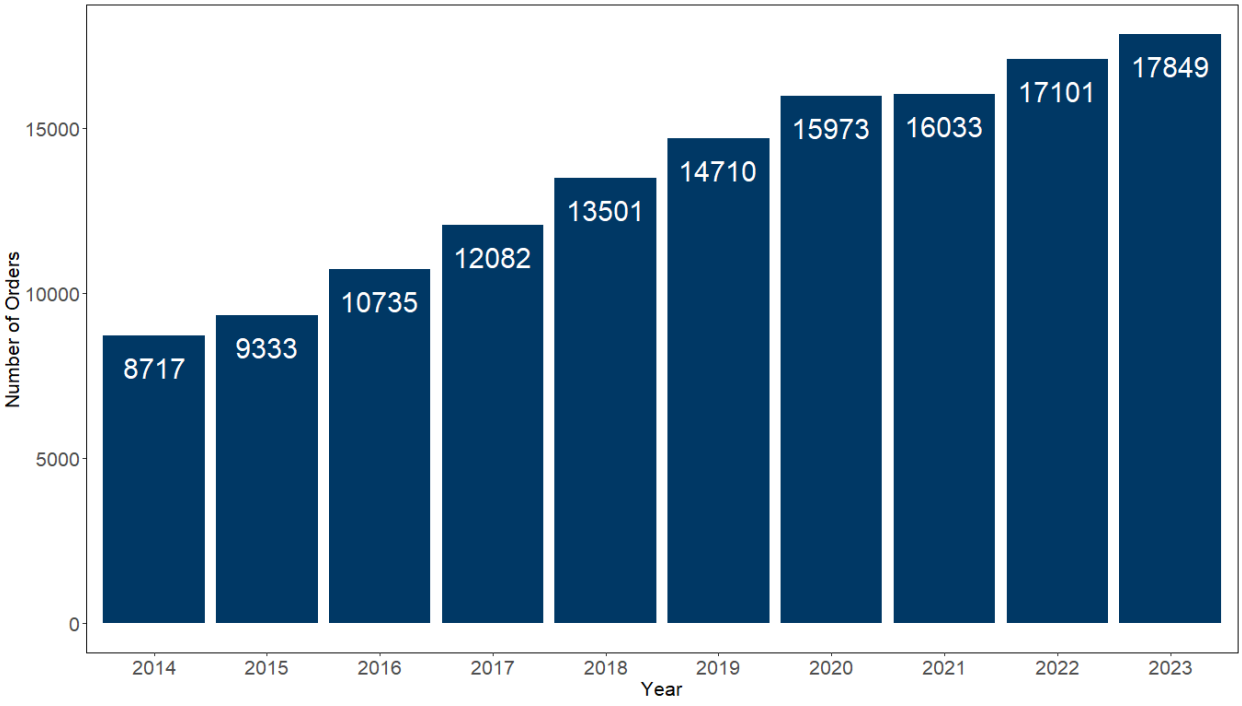
We count the number of people who are subject to a welfare guardianship order on a particular day – 31 March. We call this 'extant or existing orders'.

There was a total of 17,849 individuals subject to a guardianship order in Scotland on 31 March 2023 compared to 17,101 in 2022. Glasgow City have the highest number of extant or existing orders (14.7%; n=2,632) followed by Fife (7.3%; n=1,296).

The number of people on a guardianship order in Scotland has increased over time (Figure 1); compared to 2022 there was a 4.4% increase this year.

A breakdown of characteristics of extant (or existing) guardianship orders is provided in Table A1, which shows that 62.8% (n= 11,181) of all people on a guardianship order were 45 years or older (similar to the % figure reported for the last two years), 27.0% (n=4,821) were on an indefinite order, the most common primary diagnostic groups were learning disability (51.3%) and dementia (35.4%), and 77.8% were subject to a private guardianship order.

Figure 1. Number of people on a guardianship order in Scotland on 31 March by year

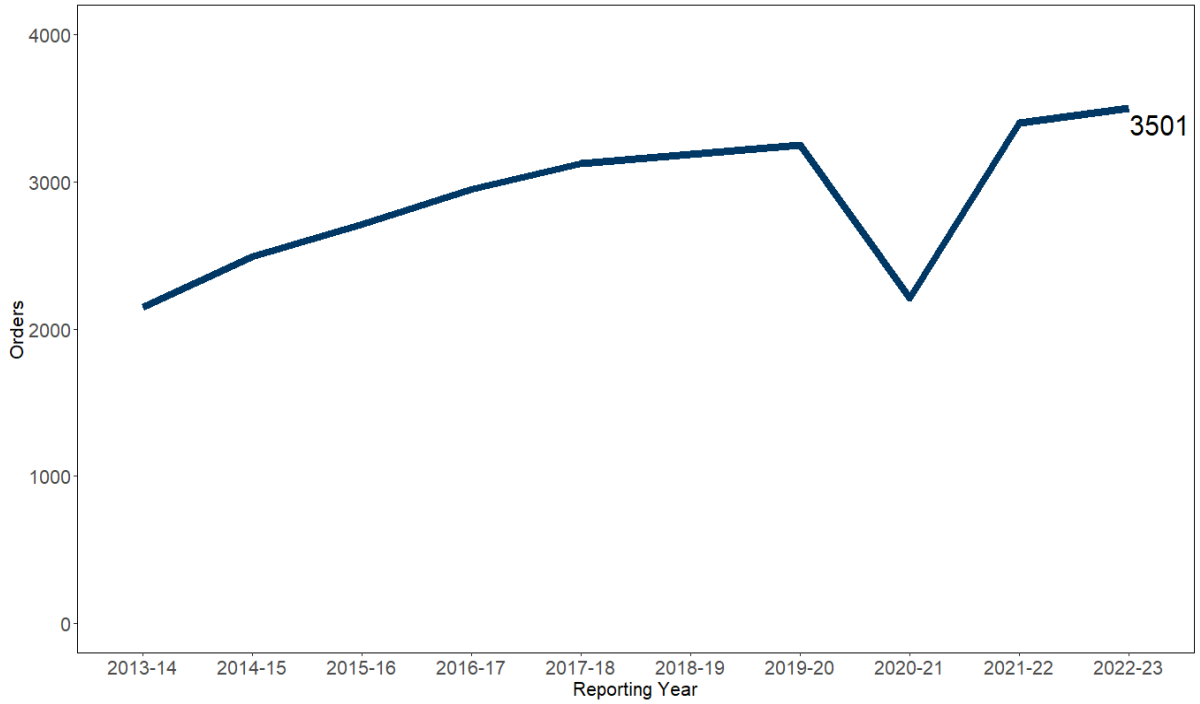


Whilst the AWI Act recognises that there might be circumstances in which an adult no longer requires a guardian, for example if they recover sufficient capacity, our data shows that there have only been 15 recalls of orders since 2017.

Granted guardianship orders

A total of 3,501 guardianship orders were granted in 2022-23 (both new orders and renewals), 2.9% more than in 2021-22.

Figure 2. Total number of new and renewed guardianship orders granted by year



For guardianship orders granted in 2022-23, 52.3% were for males and 47.7% were for females. Most guardianship orders were for individuals with a learning disability (46.0%) or a dementia (36.7%) (Table 1). This was similar to previous years. In terms of duration, 81.5% of the granted orders were for a period of five years or less (compared to 80.0% last year). 32.2% of orders granted this year were for 0-3 years, similar to the figure for last year. 14.9% were for longer than six years, lower than last year's figure of 15.6%. 3.6% were indefinite orders (down from 4.3% in 2021-22).

Private guardianship orders accounted for 71.8% of all guardianship orders granted, slightly lower than last year (72.9%). (Table A2). Those subject to guardianship orders tended to be older; 61.5% were 45 years or older (Table 1). The age of those granted a guardianship order in 2022-23 was similar to the previous year.

Table 1. Characteristics of granted guardianship orders 2022-23

Category	Grouping	n (%)
Gender	Male	1831 (52.3%)
	Female	1670 (47.7%)
Age	16-24	786 (22.5%)
	25-44	564 (16.1%)
	45-64	594 (17.0%)
	65+	1557 (44.5%)
Guardian type	Local authority	988 (28.2%)
	Private	2513 (71.8%)
Length of order	0 - 3	1126 (32.2%)
	4 - 5	1727 (49.3%)
	> 5	523 (14.9%)
	Indefinite	125 (3.6%)
Diagnostic group	Learning disability	1612 (46.0%)
	Dementia/ Alzheimer's Disease	1284 (36.7%)
	Acquired brain injury	229 (6.5%)
	Alcohol related brain damage	168 (4.8%)
	Mental Illness	151 (4.3%)
	Other	43 (1.2%)
	Inability to communicate	*

Those with 'unknown' diagnosis have been omitted
* n<5

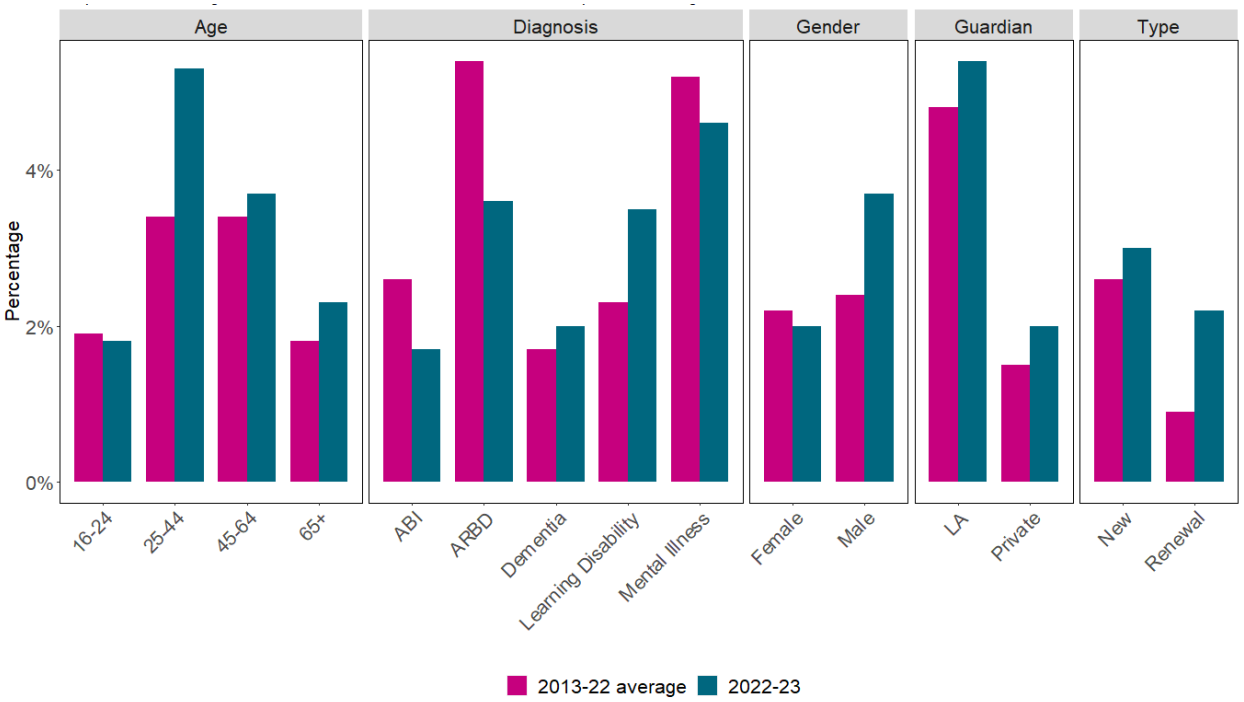
Time between application and granting of the order

The Commission is notified of the date of an AWI hearing in court and also the date the order is granted.

Most (91.2%) orders were granted within two months or less of the application being made to court, similar to previous years where on average 91.0% of orders were granted in two months or less. Compared to the average for the years 2013-2014 to 2021-22 we saw similar proportions for orders taking 3–4 months (4.2% in 2022-23 vs 4.9%), 5–6 months (1.6% in 2022-23% vs 1.8%) and more than six months (2.9% in 2022-23 vs 2.3%) from application to granting this year.

When looking at orders that took more than six months to granting, we could see some differences. Figure 3 shows that the proportion waiting more than six months to granting was higher for all dementia and learning disability but lower than average for acquired brain injury (ABI), alcohol related brain damage (ARBD) and mental illness.

Figure 3. Proportion of orders granted after more than six months in 2022-23 compared to average for 2013-14 to 2021-22

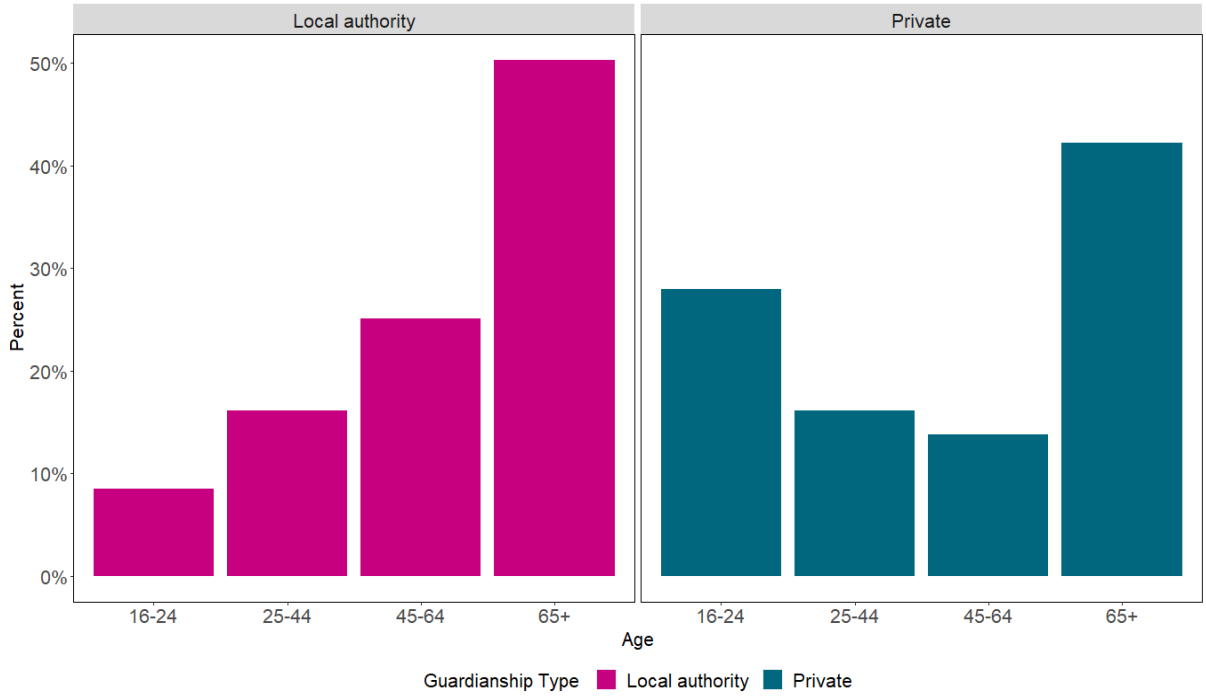


We recommend locally examining the time period between the decision being taken whether privately or by local authorities that an application for welfare guardianship should be made and the order finally being submitted to the sheriff court. We do not have data to examine these delays but the processes involved in putting forward applications and the required reports are something which should be examined in each local authority (health and social care partnership) area to ensure that these processes are as efficient as possible to avoid unnecessary delay which may affect the welfare of the adults involved.

Age

There are some differences in age of the individual depending on guardianship status; data tells us that local authority guardianship orders more often relate to people over the age of 65 years (50.3% n=497) with only 8.5% (n=84) of orders in the youngest age group (Figure 4). For private guardianships, orders granted in 2022-23 were also mostly in place for the over-65 year group however the second biggest category was the youngest age group, 16–24 years (27.9% n=702) (see Table A5).

Figure 4. Age of individual by guardianship order status in 2022-23



Primary category of diagnosis

The number of granted orders increased in 2022-23 compared to 2021-22 for the categories of diagnoses of acquired brain injury (ABI), alcohol related brain damage (ARBD) and learning disability but decreased slightly for dementias. The number of granted orders for the category of diagnosis, mental illness, was similar to last year and is shown, along with other diagnostic groups in Figure 5.

Figure 5. Number of granted guardianship orders by primary category of diagnosis and year

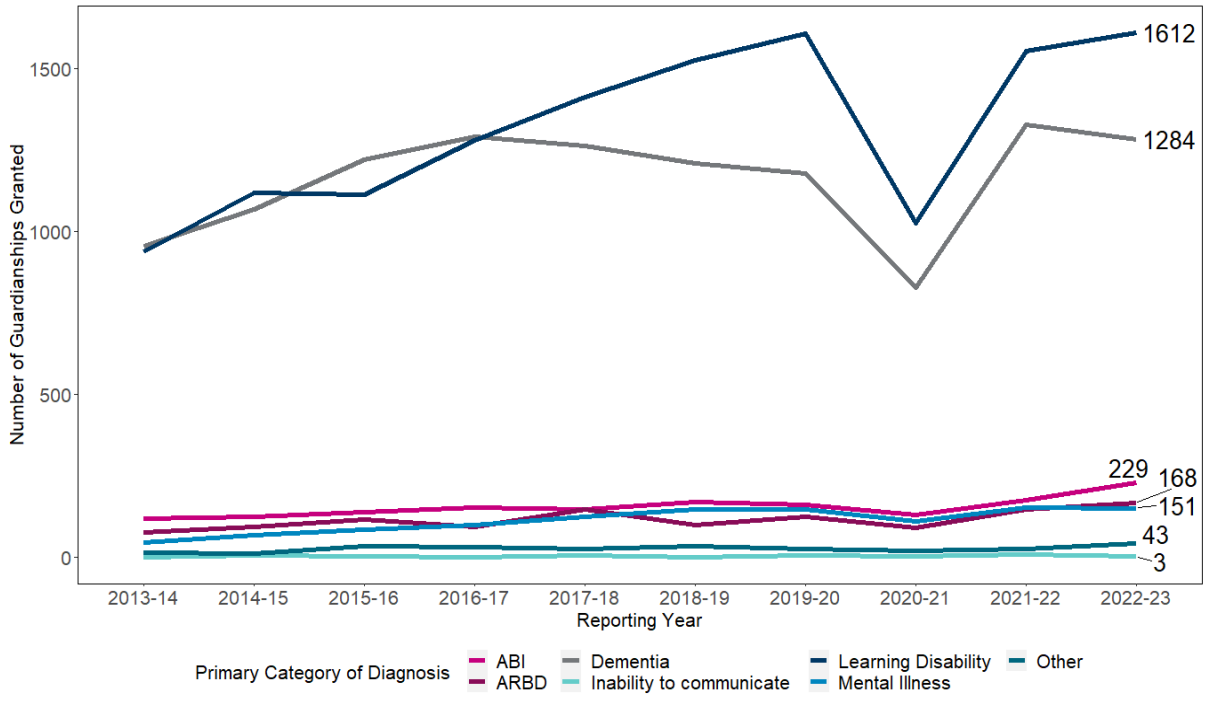
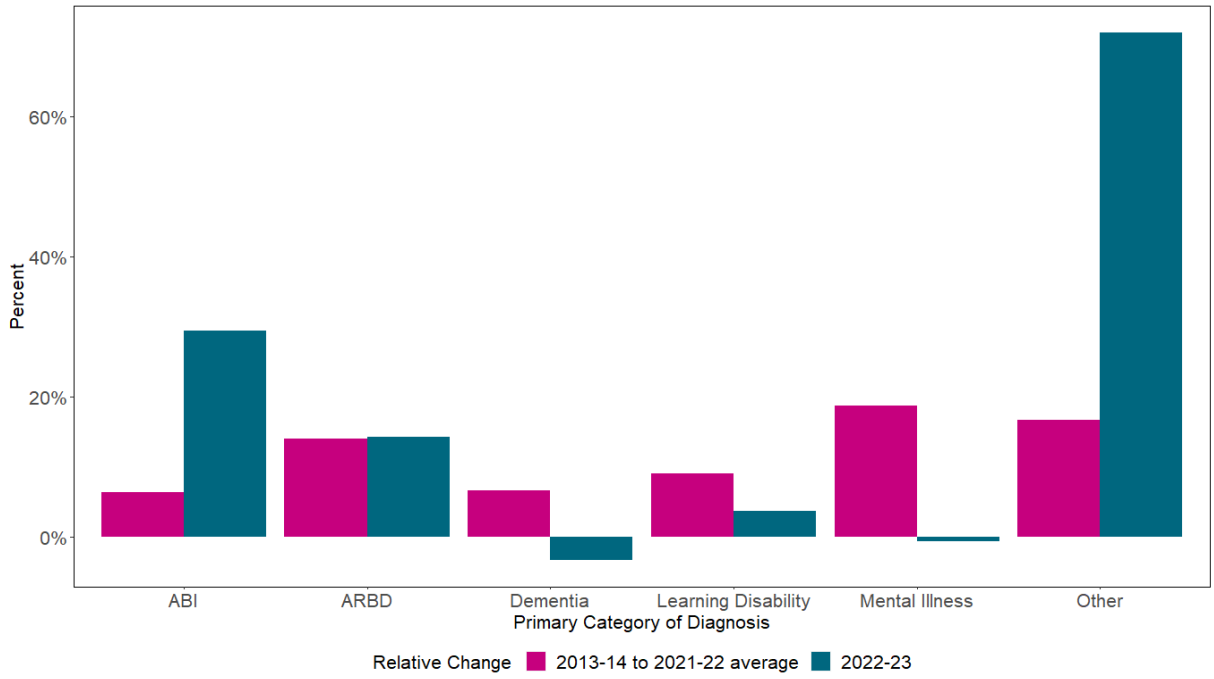


Figure 6 shows that in 2022-23 there was an increase in the relative year on year change for previous years for ABI and in the other category, ARBD is similar to the average relative change. For learning disability and mental illness there was a below average relative increase and for dementia we saw a relative decrease. The Commission is considering actions to understand what diagnoses are being recorded within the 'other' category that has seen a particularly noticeable rise in this year's report.

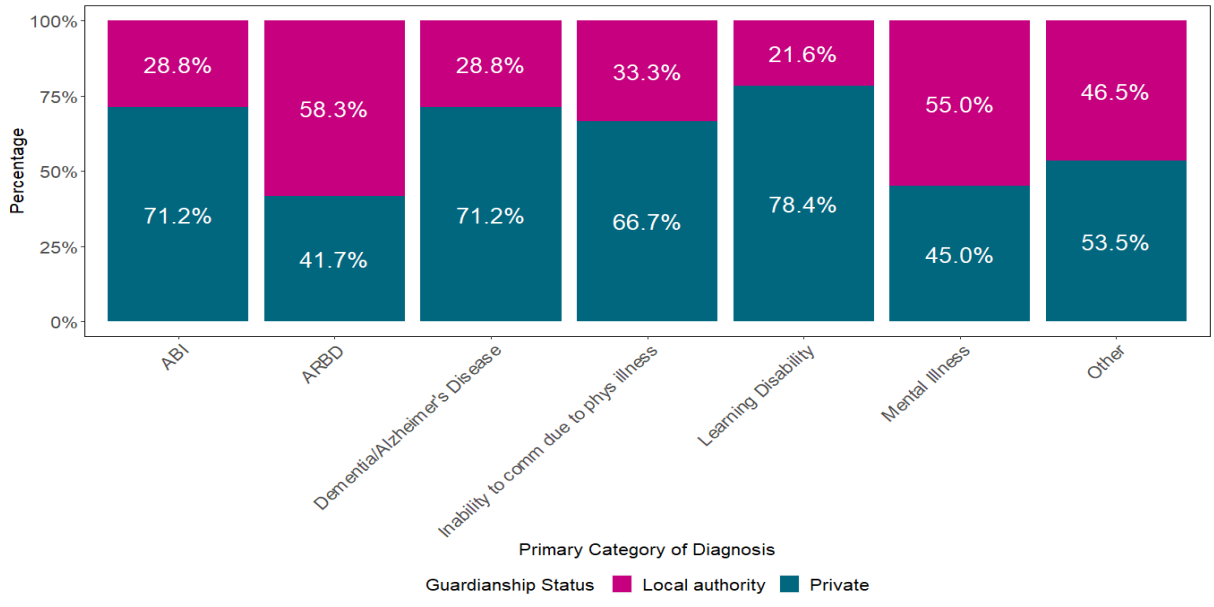
Figure 6. Relative change in number of granted orders by primary category of diagnosis in 2022-23 compared to average for 2013-14 to 2021-22



Guardian type

The type of guardianship order varies by category of diagnosis (Figure 7); alcohol related brain damage and mental illness had a higher proportion of local authority guardianships compared to private guardianships.

Figure 7. Proportion of private and local authority guardianship orders by primary category of diagnosis 2022-23

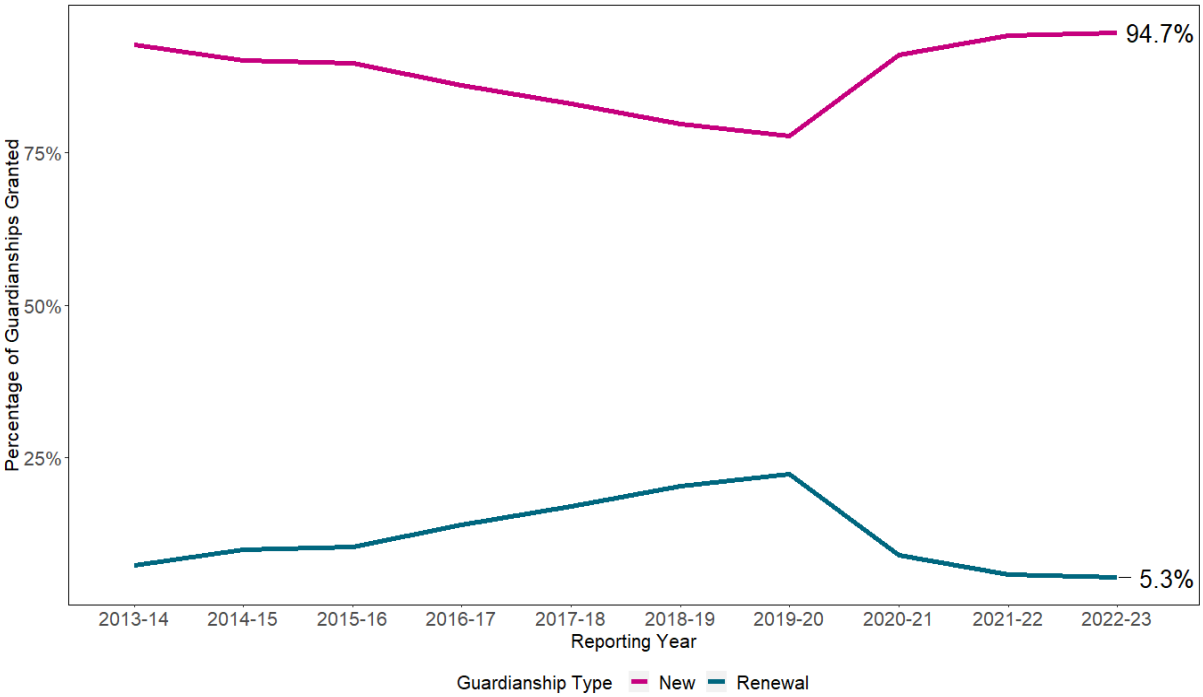


Guardianship renewals

The majority (94.7% n= 3,316) of guardianship orders granted in 2022-23 were new orders while 5.3% (n=185) were renewals of existing guardianship orders (Figure 8).

There has been a continuing increase in new orders and decline in renewed orders since 2019-20. Prior to the pandemic, we had seen a growing proportion of renewals and a corresponding decrease in new orders granted in previous years (Figure 8). The 2022-23 figures show the highest percentage of new orders in the last 10 years and correspondingly the lowest percentage of renewed orders in the last 10 years.

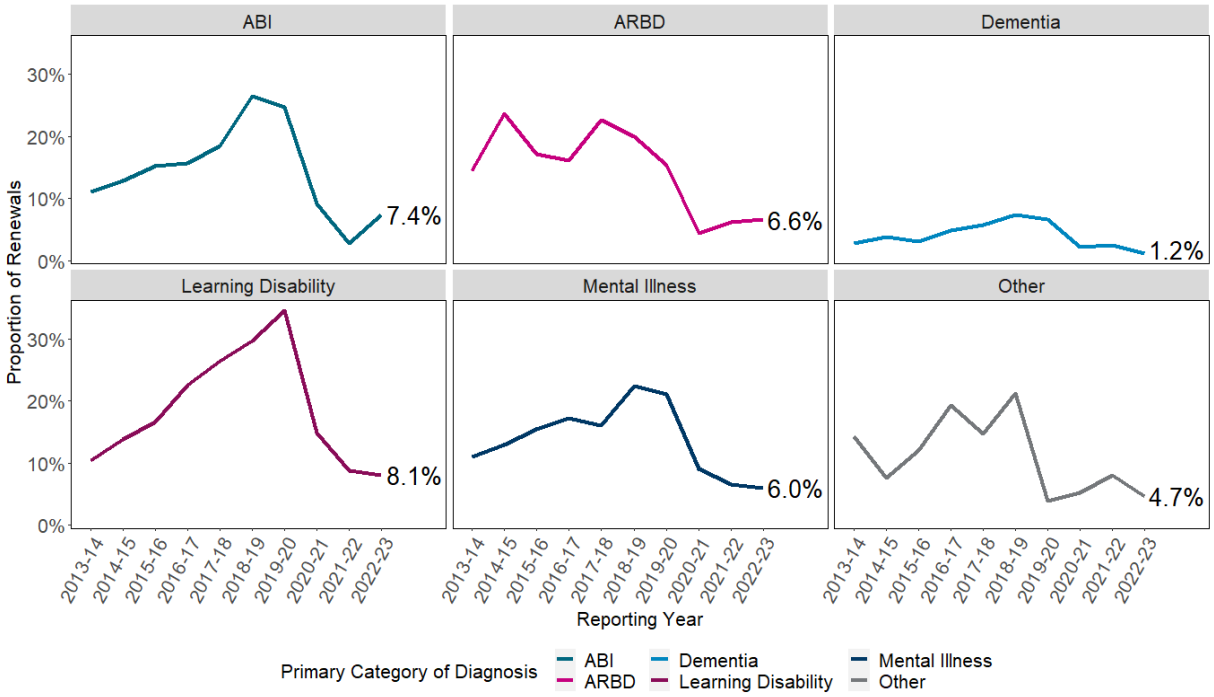
Figure 8. Proportion of new and renewed orders by year



In 2022-23 there were 185 renewals, compared with 196 renewals in 2021-22. Of the 185 renewals in 2022-23, 70.7% (n=130) were in relation to people with a learning disability, 9.2% (n=17) were in relation to people with acquired brain injury and 8.2% (n=15) for people with dementia/Alzheimer's disease (Table A3).

Of guardianships granted for people with an acquired brain injury, 7.4% were renewals compared to 2.8% in 2021-22. There was a slight decrease in the proportion of renewals in 2022-23 for those diagnosed with dementia (2.5% in 2021-22 vs 1.2%) or mental illness (6.6% in 2021-22 vs 6.0%). Of guardianships granted for individuals with a diagnosis of alcohol related brain damage or learning disability, the proportions that were renewals were similar to 2021-22.

Figure 9. Proportion of orders granted as renewals by primary category of diagnosis and year



Indefinite guardianship orders

The Commission believes that an indefinite order may be appropriate in some specific individual cases, for example, an elderly person with an advanced dementia. In other circumstances, we do not believe that indefinite orders are good practice or consistent with the principles of the AWI Act. Indefinite orders potentially breach Article 5 of the European Convention on Human Rights (ECHR)[4], where indefinite guardianship orders are used to authorise deprivation of liberty. European case law makes clear that there is a need for regular review of any restriction of liberty. Our concern is that the lack of automatic, periodic judicial scrutiny of approved orders puts the onus on the individual or another party with an interest to challenge the order if circumstances in relation to mental capacity change.

Over the years, there has been significant progress in addressing the issue of the length of time for which guardianship orders are granted. Overall, the proportion of indefinite guardianship orders continues to decline, from 32.0% in 2013-14 to 3.8% in 2022-23. There has been a decline in indefinite guardianship orders across all age groups over time, but most starkly in the age group over 65 years (Table A7).

The proportion of indefinite guardianship orders for all categories of diagnoses continued to decline this year apart from ABI where the figure is similar to last year and the Other category where there was an increase from 0% to 2.3% (Figure 10).

Figure 10. Proportion orders granted indefinitely by category of diagnosis and year

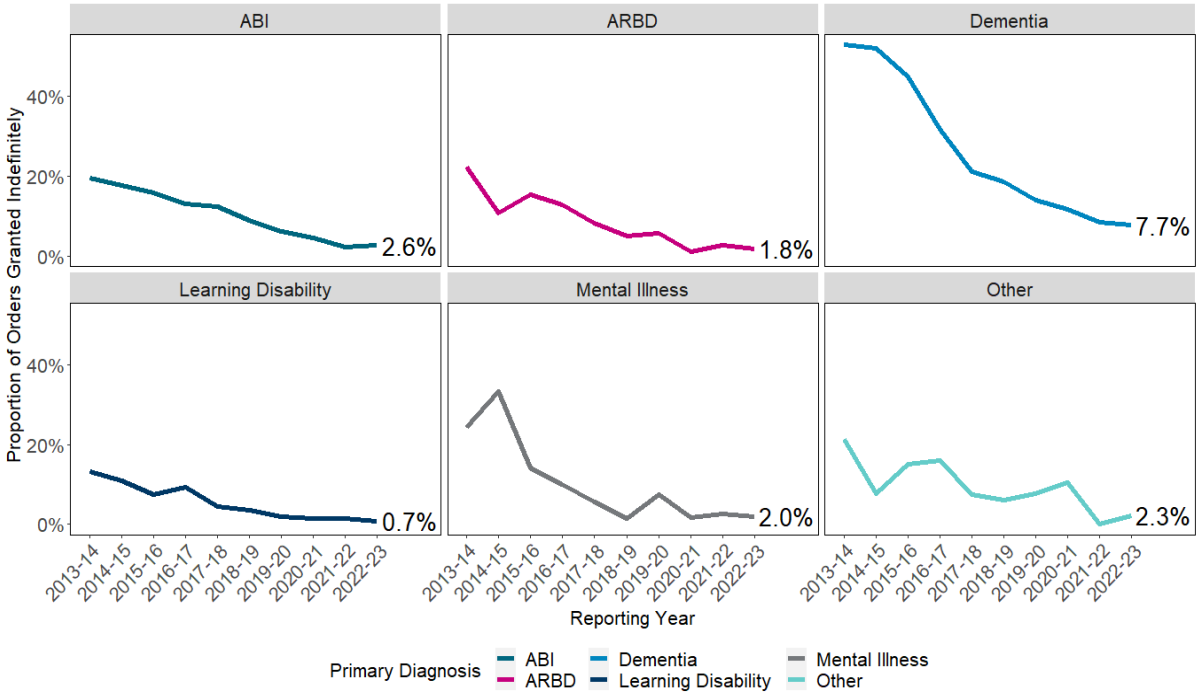
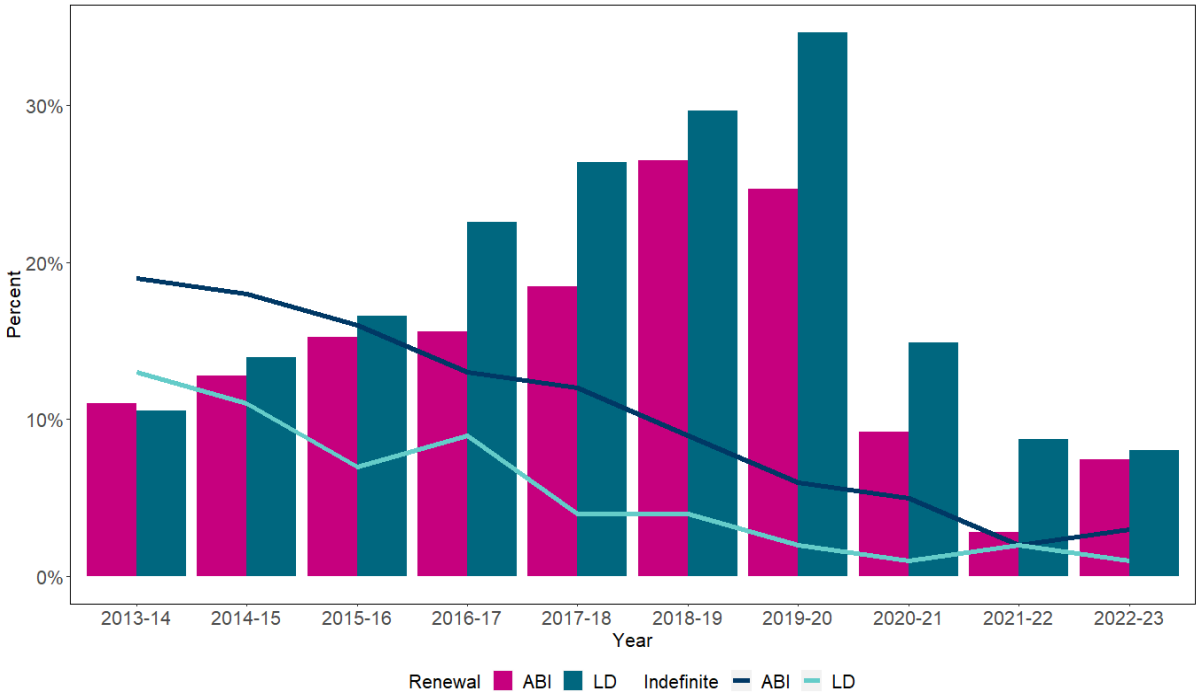


Figure 11 shows the proportion of guardianships for acquired brain injury and learning disability which were indefinite by year.

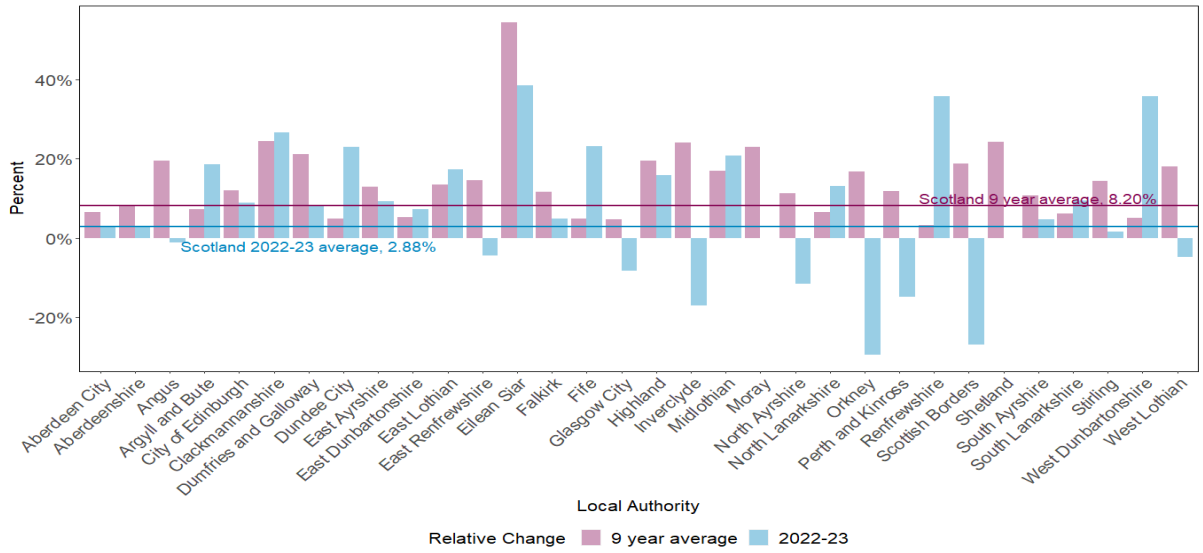
Figure 11. Proportion of guardianship orders for ABI and LD which were indefinite by year



Geographical variation in number of granted guardianships

The number of guardianship orders granted in 2022-23 for each of the local authorities in Scotland are presented in Table A6. Figure 12 shows the average year-on-year change between 2013-14 and 2021-22 and then the change in 2022-23. The change over the more recent year was lower than in the previous years, 2.88% compared to 8.20%.

Figure 12. Average year-on-year change (2013-14 to 2021-22) in number of granted guardianships and change between 2021-22 and 2022-23 by local authority



The overall rate of granted guardianship orders in 2022-23 was 76.1 per 100,000 population in Scotland. The rate varies between local authorities (Table A7), with the highest rates in Dumfries and Galloway (119.1 per 100,000), South Ayrshire (118.7 per 100,000) and Highland (111.5 per 100,000).

Figures 13a and 13b provide an 'at a glance view' of guardianship rates across Scotland and where the rate is higher or lower in different local authority areas according to the national average of 76.1 per 100,000 population.

Figure 13a. Rate of granted guardianship orders (new and renewed) in 2022-23 per 100,000 population (≥16 years) with 95% confidence intervals by Local Authority

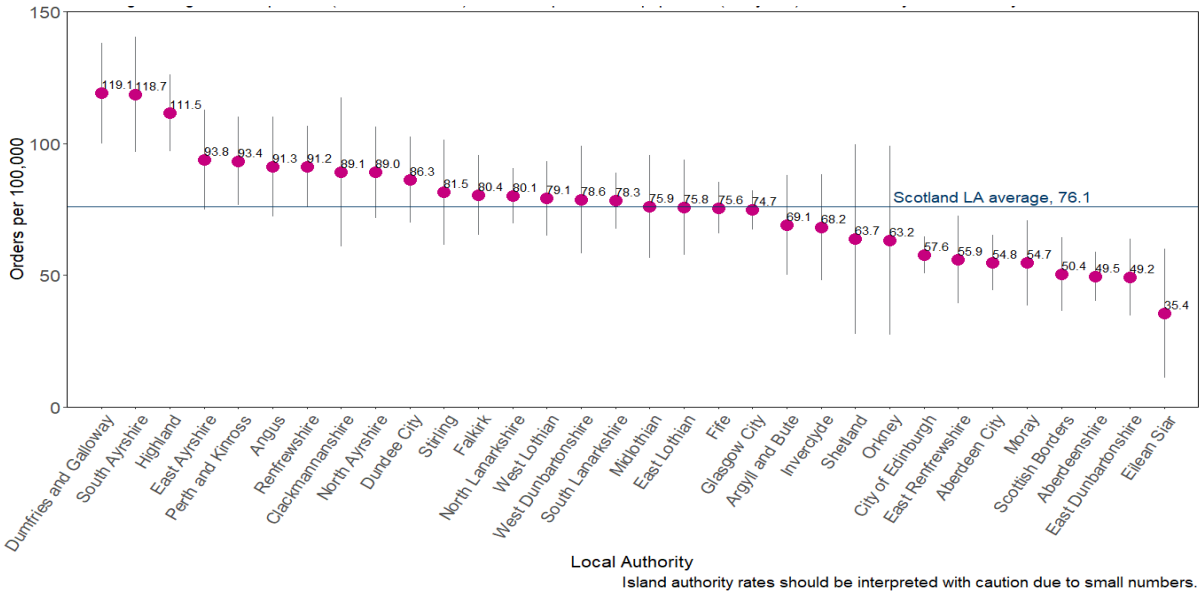
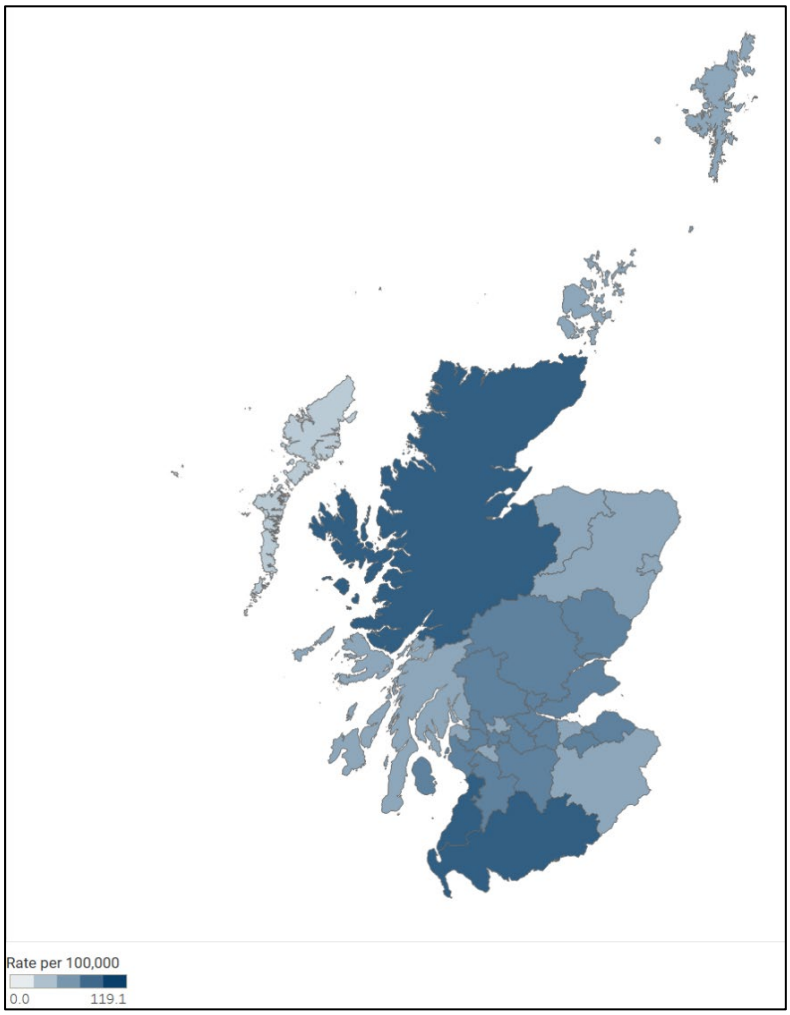
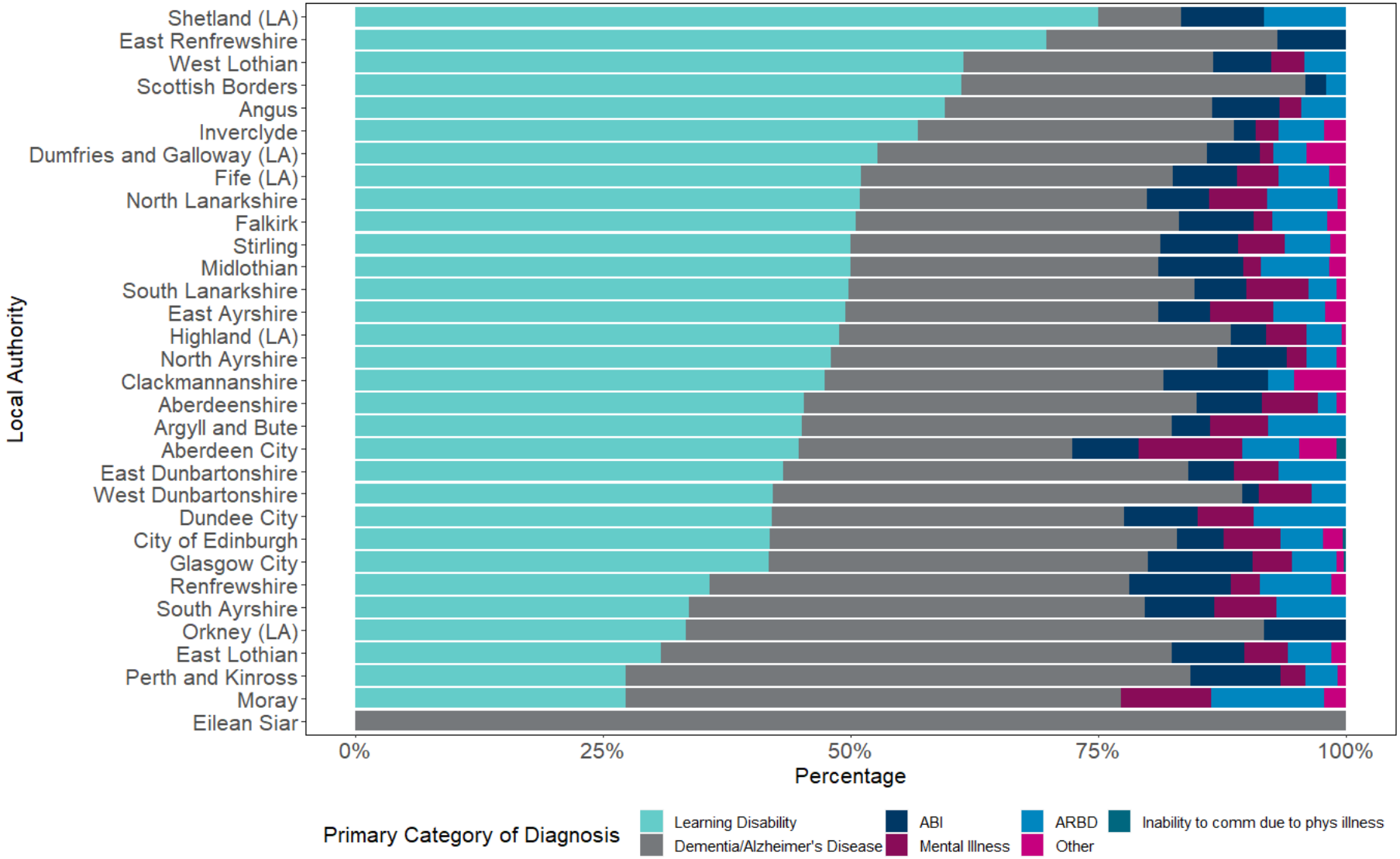


Figure 13b. Map of rate of granted guardianship orders (new and renewed) in 2022-23 per 100,000 population (≥16 years) by Local Authority



Local Authority	Rates
Dumfries and Galloway	119.1
South Ayrshire	118.7
Highland	111.5
East Ayrshire	93.8
Perth and Kinross	93.4
Angus	91.3
Renfrewshire	91.2
Clackmannanshire	89.1
North Ayrshire	89.0
Dundee City	86.3
Stirling	81.5
Falkirk	80.4
North Lanarkshire	80.1
West Lothian	79.1
West Dunbartonshire	78.6
South Lanarkshire	78.3
Scotland	**76.1**
Midlothian	75.9
East Lothian	75.8
Fife	75.6
Glasgow City	74.7
Argyll and Bute	69.1
Inverclyde	68.2
Shetland Islands	63.7
Orkney Islands	63.2
City of Edinburgh	57.6
East Renfrewshire	55.9
Aberdeen City	54.8
Moray	54.7
Scottish Borders	50.4
Aberdeenshire	49.5
East Dunbartonshire	49.2
Eilean Siar	35.4

Figure 14. Category of diagnosis of individuals granted a guardianship order in 2022-23 by Local Authority



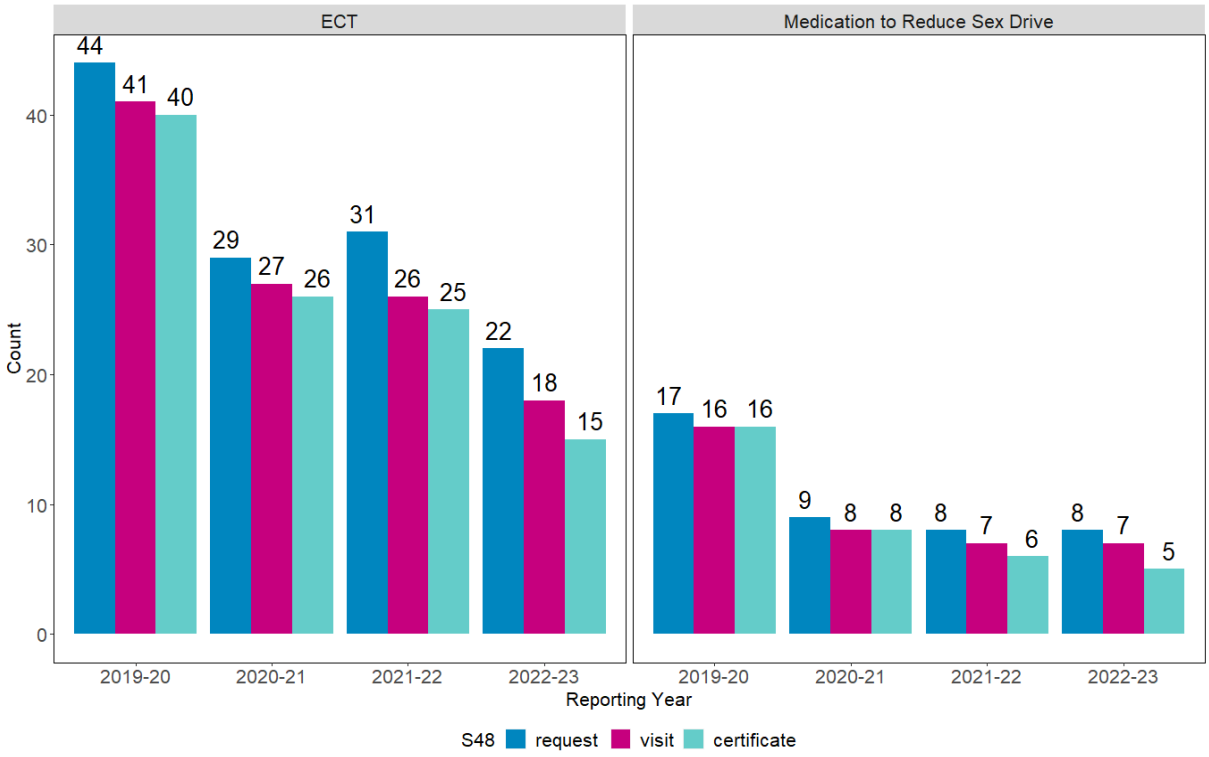
Medical treatment

The Commission has a responsibility under the AWI Act to provide independent medical opinions for treatments that are not covered by the general authority to treat (section 47; s47)[1] .

These specific treatments are regulated under section 48, for example, electro-convulsive treatment (ECT)[5]. In addition, where there is a welfare proxy with the power to consent to medical treatment, and there is disagreement in the treatment between the proxy decision maker and the treating doctor, the doctor can request that the Commission nominate and arrange an independent medical opinion by an appropriate specialist to resolve the dispute. These provisions are in section 50 [1].

In 2022-23, there were 30 requests for a section 48 visit for which 25 visits took place. This is lower than the figures in 2021-22 (Figure 15).

Figure 15. Number of section 48 requests, visits and certificates issued by year



For both requests and visits, the majority were for electro-convulsive therapy (ECT) (73.3% and 72.0%, respectively), with the remaining for drug treatment to reduce sex drive (Table 3).

Table 3. section 48 requests and certificates issued for treatment

Treatment	Requests	Visits a)	Certificates b)
Drug treatment to reduce sex drive	8	7	5
ECT	22	18	15
Total	**30**	**25**	**20**

a)Where a section 48 visit does not go ahead after a request, this may be for one of a number of reasons e.g. the person's circumstances change or there is clinical improvement and the treatment is no longer necessary, or they require treatment under the Mental Health Act.

b) In cases where an independent section 48 doctor visited and did not issue a section 48 certificate this may be due a clinical improvement such that they no longer considered that the proposed treatment was necessary.

In 2022-23 there were fewer than 5 requests for an independent second opinion doctor visit under section 50[1]. After an increase in 2021-22, this figure is similar to previous years.

[1] Section 50 of the AWI (2000) Act provides a procedure for resolving disagreements where a proxy with relevant powers disagrees with a proposed treatment. This may involve an independent doctor nominated by the Mental Welfare Commission providing a further opinion on that treatment.

PART 2 – Guardianship visits

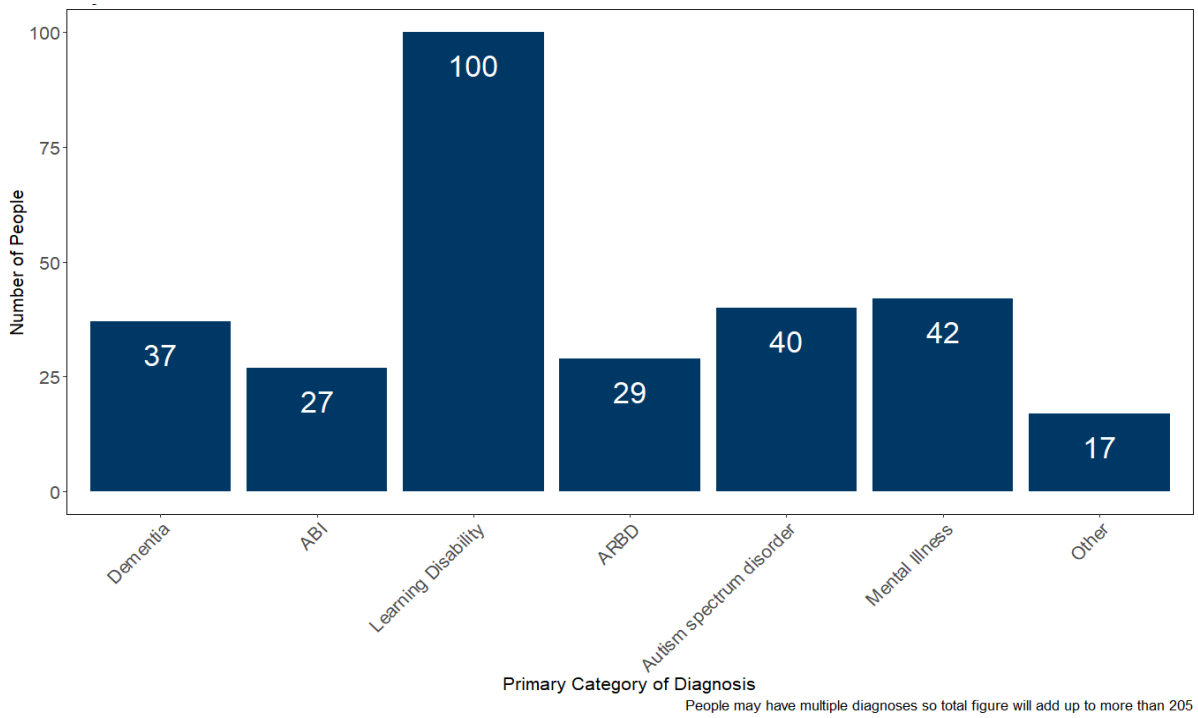
Our visits

During 2022-23, we visited 205 individuals on a guardianship order (98.1% in person and 1.9% virtually). Most were routine visits (77.6%), while 17.6% were due to concerns that had been raised.

We visited a slightly higher proportion of people with private guardianship orders (51.7%) than local authority guardianship orders (48.3%).

Out of the 205 individuals we visited, 14.2% lived with their guardian, while 82.4% did not. Figure 16 below details the diagnostic groups of the people we visited.

Figure 16. Category of diagnoses of people we visited who were subject guardianship orders in 2022-23



We asked the individuals and their guardians about how they felt the guardianship order was working, our Commission officers reported:

> *"He told me his mum supports him to make decisions… he said he will tell his mum if he does not want to engage in any support or activity. He told me that he loved and trusted his mum and added that she offers him lots of support."*
>
> *"One guardian told us: I have had almost no contact with the social work department. I contact them every year to try and get my daughter a place in a local college but it is always a different social worker and they start from the beginning every time."*
>
> *"His guardian told me of his frustration around the lack of respite provision in the area and the lack of ability to access consistent care. The guardian advised me of his annoyance around the call offs from the care provider due to lack of staffing during Covid which has impacted on his son's college placement."*

Accommodation and living circumstances

45.1% of our visits were to a care home, 25.4% were to people living in supported tenancies, 22.9% took place in the family home, and 2.4% were hospital-based visits, 2.9% were in other types of settings and we weren't able to establish accommodation for 1% of people.

We saw and heard of contrasting experiences provided by care homes. Our Commission visitors reported:

> *"She was supported to live as full a life as possible in the care home. She had access to the home hairdresser, social nights, contact with her neighbour, an exercise group and afternoon teas in the home. Due to her sociable personality, she has developed friendships in the home which help to make her feel part of the community in the care home."*

> *"On the day of the visit there was a significant absence of staff. Usually there would be one nurse and five care assistants; on the day there was one agency nurse and two care assistants. There was no evidence of any social stimulation provided for him either by the staff or that could be found documented in his notes; he lay on his bed, in front of a television falling in and out of sleep. The condition of his room was of concern. There was damage to the walls and numerous marks. There were stains on his bedside lampshade, used PPE (gloves and plastic lids) next to his bed, and the room was stained and dirty."*

For those living in supported tenancies, their experiences were reportedly more positive:

> *"She lives in a shared house; this is a tenancy with communal space. She has a garden and the house has extensive grounds that enable her to walk to and from her work placement. She told me that she loves being on a farm. Covid 19 pandemic affected her getting into the community, as many activities had closed. However, her routine is now back to normal and she is enjoying this."*

A's circumstances are well known to the Commission and we were delighted to be able to visit him in his own supported tenancy:

A

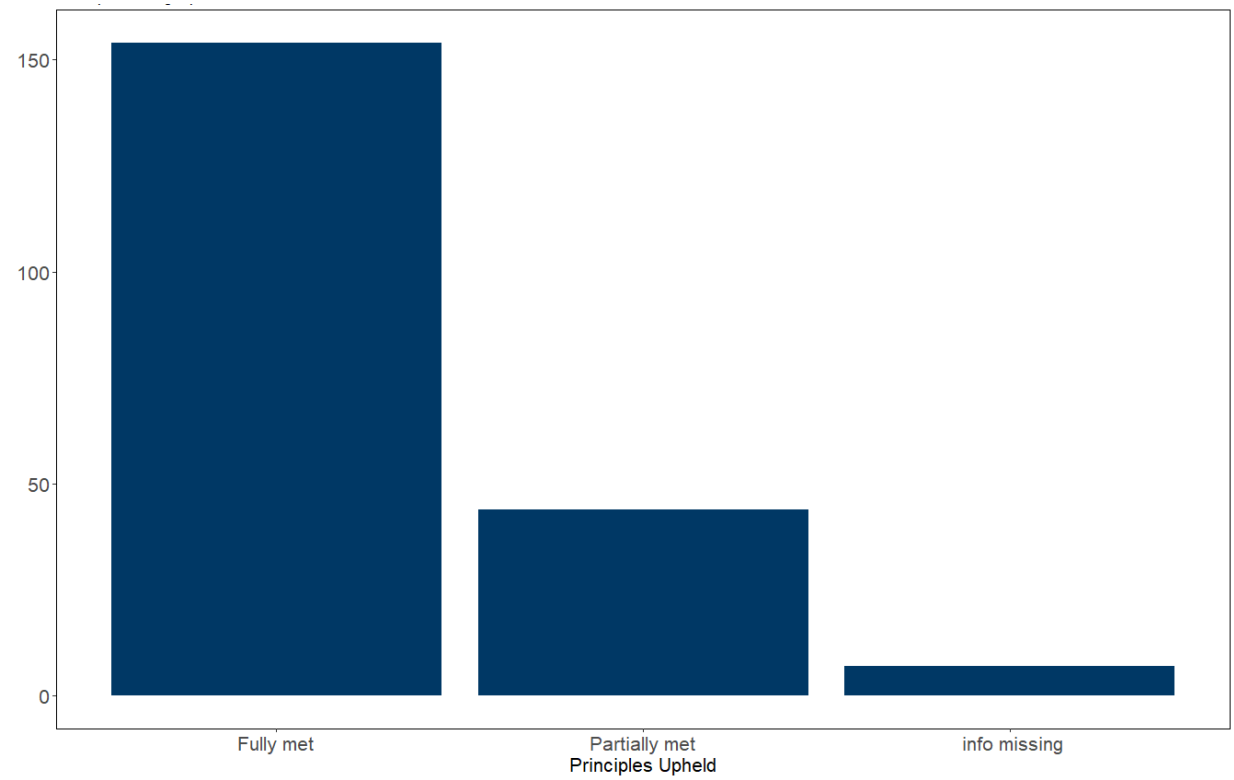
A has a diagnosed learning disability and mental illness. He had been in hospital for most of his adult life. His discharge had been delayed for almost a decade due to no placement being found to meet his needs. The Commission had retained an interest in A's circumstances and were made aware of community supported accommodation eventually being identified for A in 2021.

When we visited in 2023, it was positive to hear about how well A had settled into his own tenancy, and about the new skills that he had been developing. The transition plan that was put in place had been of benefit to A, along with the joined up working between the hospital multi-disciplinary staff team and A's community provider. This had resulted in a positive outcome for A, as the staff had been provided with all the information needed in order to provide the right level of care, and to support him in the best possible way, using a positive behavioural support framework. This, along with the authority of the welfare and financial guardianship order, has provided a structured way to support A in his own home.

Staff supporting A told us that "this is still new for A… he doesn't seem to know the place is all his…this could be due to being in hospital for a lot of years and only having his bedroom space to himself". We heard that A was now visiting his sibling at home every week, and that this has been "really positive" as his sibling "never thought this would happen".

For each visit undertaken, we evaluated the individual's situation in relation to the overall principles of the AWI Act (see Box 1 above). We found that 75.1% (n=154) guardianship orders fully met the five principles (see Figure 17), 21.5% (n=44) partially met the principles and we were unable to ascertain this in 3.4% (n=7) of the visits we made.

Figure 17. Extent to which the Principles of the AWI (2000) Act were met for those we visited who were subject to guardianship orders in 2022-23



Person-centred care plans

During a guardianship visit we review any available care plans. We expect care plans to describe the care, treatment and support available and to reflect the person's hopes and aspirations as a unique individual. Care plans should be person centred and inclusive.

83% of the 196 care plans we reviewed were considered to be person-centred.

> *"The care home had a number of care plans addressing his physical and mental health needs. These care plans were all detailed, person-centred, showed outcomes and interventions to meet those outcomes and are regularly reviewed."*

> *"Care plans were very detailed and person centred, covering all holistic needs. They were outcome focussed and there was clear goal setting in the short, medium and long term. Psychology has been involved and has devised a proactive strategy to support staff when B is feeling anxious and displaying stress/distress behaviours. There were up-to-date risk assessments and risk management plans in the care file, along with very detailed background history and evidence of regular review of each care plan. The care plans included B's likes/dislikes and staff are aware of B's communication style and follow a clear visual timetable that is supported by social stories."*

Meaningful activity

We found an individualised programme of meaningful activity in place for 76.1% of the people we visited. For 17.1% we found that this was not the case. For the remaining individuals (6.8%), there was limited information provided about their day-to-day routine.

We wanted to know more about the individuals who did not have access to a range of activities that might be beneficial to their health and wellbeing. For 39% of this group, we noted that their physical and mental state impacted on their ability to engage in a range of activities or it was a personal choice not to do so. Where we found that meaningful activity and stimulation could be improved upon, we raised this either on the day with those that we spoke to, or we followed this up with the supervising officers for the guardianship order.

Where individualised meaningful activity was prioritised we heard the positive impact of this:

> *"C has a clear visual timetable in place. She likes to know what is happening and likes routine and structure to her day. She attends a placement 4 days per week and enjoys doing activities such as metalwork/crafts. She really enjoys arts and crafts and painting and will do these in her house, and she displays on her walls at home. C has a Motability car and staff take her out most days for trips, shopping etc. C will also take part in some group activities with other tenants who live on the estate. C's parents and staff said that she is a very sociable person and likes going out and about but likes her own space too. I (Commission visitor) was able to see from the pictures that C had displayed in her home all the fun places she has visited and activities that she enjoys. New activities are discussed with C and goals are set in her reviews."*

> *"D told me that he volunteers at a local garden centre twice per week which he enjoys and has been helping out with volunteering at a local café. He has scheduled support with staff each day and he plans his activities either on the day with his worker or in advance. More advance planning is required for trips out with area or for holidays as he requires more support than his allocated hours. D told me he has bought a bike and is hoping to go out on this; he wants to focus on a healthier lifestyle as he has put on weight during lockdown."*

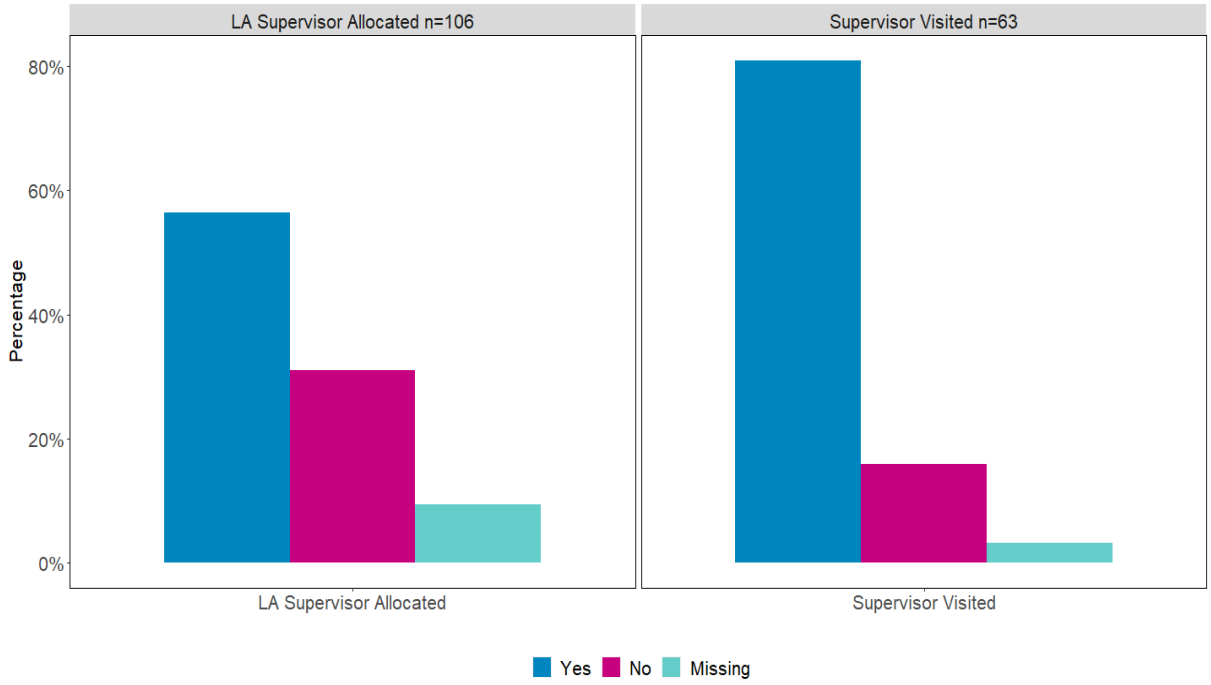
Guardian supervision and contact

Under the AWI Act, four public bodies are involved in the regulation and supervision of those authorised to make decisions on behalf of a person with incapacity. These are: the Office of the Public Guardian (Scotland), the Commission, the courts, and local authorities. According to the AWI Act, local authorities must fulfil certain duties in relation to people who are on welfare guardianship orders:

> *"A local authority shall have the following general functions under this Act to supervise a guardian appointed with functions relating to the personal welfare of an adult in the exercise of those functions".[1]*

We expect all individuals we visit on a private guardianship order to have a local authority supervising officer allocated. Of the 106 individuals who we visited who were on a private guardianship order only 59.4% had a local authority supervising officer allocated, 31.1% did not and we were missing this information for 9.4%. For the 63 people under private guardianship where an officer was allocated, 81.0% of individuals had received a visit in the past six months, 15.9% had not and we had no information on 3.2% (Figure 18).

Figure 18. Allocation and visits from supervising officer for private guardians in 2022-23



The interpretation of supervision comes via codes of practice or statutory instruments which explain how powers should be used. Support and supervision requirements of private welfare guardians changed in 2014; this allows local authorities to consider reducing or ceasing visits where all parties are in agreement[6]. There is scope for private guardians and local authorities to reduce the statutory supervisory requirement in relation to individual circumstances, however the Commission needs to be formally notified of such an agreement. The Commission will be undertaking further work to clarify whether this relatively low rate (59.4%) of allocation of supervising officer relates to active decision making in relation to a person subject to a guardianship order or not.

During our visits we seek to gather information regarding how often the guardian has visited the person and we follow up on an individual basis where indicated. For private guardianships, 73.9% of guardians had visited in the last six months, 1.9% had not, for 20.8% this was not applicable (e.g., the person was living in the family home), and we were missing information on 3.8% of people. We were not able to determine this information for local authority guardianship orders. We have approached all local authorities to request the names and contact details of the delegated officer acting as guardian on behalf of the chief social work officer and the name and contact details of local authority supervisors of guardianship orders. This proactive approach is intended to ensure there are no gaps in allocation of these key roles to ensure responsibilities and duties of the welfare guardian/supervisor are being fulfilled as per the court order granted.

Rights and restrictions

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is a comprehensive convention of human rights for people with disabilities. The Convention "adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms"[7].

During our visits, we look for examples of the principles of the AWI Act and of rights in line with the UNCRPD to demonstrate the adult is supported to exercise their rights, wherever possible, in relation to all aspects of their lives. This might include elements of supported decision making to allow them to participate and make the decisions they are able to make for themselves.

E

E was referred to the Commission by her advocacy worker in 2022. E's family were appointed as welfare guardians but there were concerns about interventions being overly restrictive and not respecting E's rights. There were also concerns that E did not feel safe in her supported placement.

With renewal of the order due in 2022, E remained unhappy about the guardianship order continuing. The Commission ensured that E's views were listened to and there was agreement from the multi-professional team involved and the welfare guardians that E had made significant progress since the order had been granted. The guardianship order was renewed however the restrictions on E were eased and she is now managing her medication by herself, travels independently, responded positively to all new responsibilities given to her and is now supported to claim her rights.

At a review in spring 2023, prior to E's move to alternative accommodation, it was agreed by the welfare guardians and the local authority, that AWI criteria were no longer met.

Medication and section 47 certificates

The *Code of Practice*[2] and Mental Welfare Commission guidance[3] are clear in relation to the use of section 47 certificates. Where an individual does not have the capacity to consent to the treatment they require, a doctor should formally assess their capacity and, on finding someone incapable of consenting, complete a certificate. Where this treatment is complex, they should complete a treatment plan. If a certificate is not done, then the treatment given is unlawful.

If there is a proxy decision maker, namely a welfare guardian or someone acting as a welfare power of attorney (POA), then the medical practitioner should also discuss the treatment with them. There is a clear space on the certificate for the doctor to put the name of the proxy decision maker. Care staff should assist the doctor in identifying the proxy decision maker from records and their knowledge of the adult.

Most individuals we met (80.5%) had medical powers granted within the guardianship order, 13.2% did not and we did not have information for 6.3%. A section 47 certificate was required for 72.7% of those individuals (18.6% did not require one and we did not have information on 8.8%). Of those who required a section 47 certificate (n=149), the majority (75.8%) had one in place. However, 21.5% of the people we met with did not have authority in place to provide treatment and that is a concern, we had no information on a further 2.7% of people. We raised these concerns on the day of our visits when we identified them. The Commission, through its visiting programme, will continue to remind practitioners and managers of health and social care services about the need to ensure appropriate authority for treating people who lack

[2] Scottish Government, *Adults with incapacity: code of practice for medical practitioners*. 2010 https://www.gov.scot/publications/adults-incapacity-scotland-act-2000-code-practice-third-edition-practitioners-authorised-carry-out-medical-treatment-research-under-part-5-act/

[3] Mental Welfare Commission, *Right to treat? Delivering physical healthcare to people who lack capacity and refuse or resist treatment*. 2011 https://www.mwcscot.org.uk/sites/default/files/2019-06/Right%20to%20Treat.pdf

capacity to consent to the relevant treatment including through the completion of a section 47 certificate.

For individuals for whom a section 47 certificate was required and in place, 99.1% were appropriate, however only 69.9% had a treatment plan (19.5% did not have one in place and we were missing information for 10.6%). In only 54.9% of cases was the guardian consulted about the section 47 certificate, in 15.0% of cases the guardian was not consulted, in 20.4% it was not clear whether consultation with the guardian had taken place and we were missing information in 9.7% of cases.

Do not attempt cardiopulmonary resuscitation (DNACPR)

If an individual lacks capacity, the principles of the AWI Act apply. In those circumstances where applicable, intervention with cardiopulmonary resuscitation (CPR) should be considered if it is likely to be of overall benefit for the individual. If the clinical opinion is that there would be no benefit, then a Do not attempt CPR (DNACPR) decision is appropriate. The past and current views of the individual, if known, must be taken into account and there is a duty to consult relevant others and ask if there is any valid advance directive which should be assessed to see if it is applicable. Proxy decision-makers, i.e. welfare attorney/welfare guardian must be involved in the process as they would have the same power to consent or refuse consent to a medical intervention as a capable individual would.[4]

Of the people we visited, a DNACPR was in place for 20.5% of people we visited and 60.5% of people did not have this. In 19.0% information about whether a DNACPR had been put in place was missing or not recorded. Where we found a DNACPR in place, the welfare guardian was consulted in only 52.4% of cases and not in 33.3%. The information was missing or unclear in 14.3% of cases.

Finances

The AWI Act provides arrangements for making decisions and taking actions to safeguard the personal welfare, property, and financial affairs of adults whose capacity to do so is impaired. Part 6 allows for an application to be made to the court for:

- An intervention order authorising a person to take action, or make a decision, of which the adult is incapable.
- An order appointing a person or office holder as guardian in relation to the adult's property, financial affairs, and personal welfare.
- An order appointing a person or office holder in relation to a child who will become an adult within three months, but such an order will not have effect until the person's 16th birthday.[5]

Practical guidance around financial guardianship is outlined in our guidance *Money Matters.*[6] We reviewed the management of an individual's finances on all our visits during 2022-23. For most adults, a financial guardian (38.2%) or Department for Work and Pension (DWP) appointee (43.7%) were responsible for finances. In a few cases it was the adult themselves with or without support (5.0%), or other (6.0%). There were very few cases where the finances

[4] NHS Scotland, *Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) – Integrated Adult Policy.* 2010 https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2010/05/attempt-cardiopulmonary-resuscitation-dnacpr-integrated-adult-policy-decision-making-communication/documents/0098903-pdf/0098903-pdf/govscot%3Adocument/0098903.pdf

[5] Adults with Incapacity Act (Scotland) Act 2000 (asp 4) s 6

[6] Mental Welfare Commission, *Money Matters – Good practice guide,* 2019 https://www.mwcscot.org.uk/sites/default/files/2019-06/money_matters.pdf

were handled by a continuing attorney. The majority of individuals were assessed as having sufficient access to funds (88.3%).

Specific advice given by the Commission[7]

Either at the time of a guardianship visit, or after we have completed one, the Commission may follow up with any questions we have in relation to our findings. We also monitor this activity as part of our own internal governance, and in the past, this has led to further work being identified such as our good practice guidance, or a themed visit.

Of the 205 visits we completed during 2022-23, advice was given in 62% of those visits. Recurring topics related to:

- Advice about section 47 certificates and accompanying treatment plan (44%)
- Social work reviews of the order or supervision of the guardian (19%)
- Where copies of the guardianship order should be provided (15%)
- Care plan(s) reviews (13%)

Some of the other aspects of the guardianship that we advised on related to the environment that the person lived in, the planning of longer-term care needs, contact with other organisations that would offer advice such as the Office of the Public Guardian (OPG) for advice around financial powers, the use of Do not attempt cardiopulmonary resuscitation (DNACPR) forms and activities/environments that would improve social contact and engagement.

Action required

At times, following on from a visit and where specific advice has been given, the Commission will set out some actions to be progressed as a matter of urgency. These actions may be directed at the care provider who has delegated powers, or to the supervising officer of the guardianship order, or to other professionals involved in the person's care.

In 54% of the visits where specific advice was given, we required that further action was needed. Themes for action included:

- The local authority/delegated supervising officer needed to complete a review of the order (50%)
- A section 47 certificate was required and the visit for this was to be arranged (19%)
- A copy of the powers was to be provided and available for those who required it (18%)
- Further financial information was to be requested and reviewed (6%)

There were a number of other areas where we asked for action to be taken and these included getting specific powers or support in place for the individual, reviews of staff knowledge on AWI or forms, such as the DNACPR and the sending on of information to the Commission in relation to reviews and minutes of meetings.

[7] The Commission provides a telephone advice line daily, Monday to Friday, and during 2022-23, around 700 calls were received specifically seeking advice in relation to the AWI Act.

F

F was very socially isolated in the bedroom he occupies. I was told that the care home was awaiting a specialist chair which F had been measured for. I advised for this be expedited as soon as possible. I also suggested the use of technology to support monitoring of his physical health needs i.e. a sensor mat and or a listening monitor. I was told that someone visits F in his room at least hourly but advised the staff that does not cover monitoring as it should.

We spoke at F's adult support and protection group meeting surrounding the use of technology to alert staff to F's seizure activity.

Follow up by the Commission: confirmation given that F has the chair and is able to be in the main sitting area for the residents.

G

G has a diagnosis of autism, (with associated severe learning disability) and epilepsy. He was noted to have very complex needs, associated with these conditions, which could often create challenges for those caring for him.

Our visit to G in 2023 identified significant concerns. Our view was that there had been an apparent lack of action in addressing various issues that the delegated guardian was aware of. These issues included the condition of G's home, the inappropriate environment in which G was staying, the excessive use of CCTV to monitor his behaviours, G's personal appearance, the lack of social opportunities and activities and a failure by the chief social work officer (CSWO) to adhere and achieve the principles of the act. Staff involved also commented that G's home had become "like a cage".

We contacted the CSWO in writing, made them aware of our concerns and provided a defined timeline for action. We submitted an adult support and protection referral, alerted the Care Inspectorate and requested an urgent review by the consultant psychiatrist. We also requested copies of previous adult support and protection meeting minutes, the section 47 certificate and treatment plans together with risk assessment and risk management plans in place for G.

Following our intervention, we have had regular updates from the CSWO, and while they continue to look for accommodation that will meet G's long term needs, there are plans in place to repair and upgrade his current environment. Adult support and protection processes remain in place, and there has been an increase in the number and range of professionals involved in developing and supporting G's care and treatment.

Summary

This year we present monitoring of the AWI Act and our active assessments of the implementation of the AWI Act through visiting adults and guardians.

This report relates to critically important times in people's lives when they are unable to make some or all welfare decisions themselves and required intervention under the AWI Act to protect and promote their rights.

We report that there was a total of 17,849 individuals subject to a guardianship order in 2023 compared to 17, 1013 people in 2022. A total of 3,501 guardianship orders were granted in 2022-23, 2.9%% more than in 2021-22.

A constant consideration is that the rights of those who lack capacity because of mental illness, learning disability, dementia and related conditions should continue to be protected by the law.

This year we noted that for those subject to a guardianship order who we visited through our monitoring function, only 59.4% had a local authority supervising officer allocated.

Our visiting programme also found that for 21.5% of people who we visited there was no clear authority for the treatment that they were receiving for which they could not consent.

We will continue to work with health and social care partnerships (and their respective local authorities and health boards) in supporting individuals subject to guardianship orders to ensure that their rights are upheld and that practice continues to be informed by the principles of the AWI Act. One of the ways we are doing so is to collaborate with NHS Education for Scotland to improve understanding of the Adults with Incapacity Act by devising and delivering new learning for health and care staff across Scotland.

We also look to the future and the strengthening of rights for people who require support for decision making. The Commission welcomes the recommendations from the Scottish Mental Health Law Review with regards the Adults with Incapacity Act and suggestions within this to strengthen the monitoring of rights of people who experience a deprivation of liberty. We will continue to work with the Scottish Government on realising the direction set out in the Scottish Mental Health Law Review and welcome the Scottish Government's commitment to address AWI reform as a priority.

Appendix A - Glossary

ABI	Acquired brain injury
ARBD	Alcohol-related brain damage
ASPA	Adult Support and Protection (Scotland) Act 2007
AWI Act	Adults with Incapacity (Scotland) Act 2000
CI	Confidence interval
CSWO	Chief social work officer
ECT	Electro-convulsive therapy
ECHR	European Convention of Human Rights
Inability to communicate	Inability to communicate due to physical impairment (e.g. Huntington's Disease)
Mental Health Act	Mental Health (Care and Treatment)(Scotland) Act 2003
MHO	Mental health officer
RSE	Relative standard error
s47	Certificate issued by a doctor where the adult cannot consent to the treatment being given
s48	Exceptions to authority to treat
s50	Medical treatment where guardian etc. has been appointed
POA	Power of attorney
UNCRPD	UN Convention of the Rights of People with Disability

Appendix B – Data tables

Table A1. Extant guardianships in Scotland as of 31 March 2023

Category	Grouping	n (%)
Guardian	LA	3,965 (22.2%)
	Private	13,884 (77.8%)
Local Authority	Aberdeen City	686 (3.8%)
	Aberdeenshire	740 (4.1%)
	Angus	379 (2.1%)
	Argyll and Bute	219 (1.2%)
	City of Edinburgh	1,037 (5.8%)
	Clackmannanshire	181 (1.0%)
	Dumfries and Galloway (LA)	591 (3.3%)
	Dundee City	679 (3.8%)
	East Ayrshire	416 (2.3%)
	East Dunbartonshire	262 (1.5%)
	East Lothian	240 (1.3%)
	East Renfrewshire	247 (1.4%)
	Eilean Siar	91 (0.5%)
	Falkirk	498 (2.8%)
	Fife	1,296 (7.3%)
	Glasgow City	2,632 (14.7%)
	Highland	1,154 (6.5%)
	Inverclyde	141 (0.8%)
	Midlothian	225 (1.3%)
	Moray	297 (1.7%)
	North Ayrshire	466 (2.6%)
	North Lanarkshire	894 (5.0%)
	Orkney	83 (0.5%)
	Perth and Kinross	733 (4.1%)
	Renfrewshire	698 (3.9%)
	Scottish Borders	288 (1.6%)
	Shetland	55 (0.3%)
	South Ayrshire	438 (2.5%)
	South Lanarkshire	1,105 (6.2%)
	Stirling	319 (1.8%)
	West Dunbartonshire	287 (1.6%)
	West Lothian	448 (2.5%)
Age (years)	16–24	2,651 (14.9%)
	25–44	4,017 (22.5%)
	45–64	3,209 (18.0%)
	65+	7,972 (44.7%)
Gender	Male	9,045 (50.7%)
	Female	8,804 (49.3%)
Length	0–3 years	2,537 (14.2%)
	4–5 years	6,516 (36.5%)
	>5 years	3,975 (22.3%)
	Indefinite	4,821 (27.0%)
Diagnosis	ABI	898 (5.0%)
	ARBD	604 (3.4%)
	Dementia	6,310 (35.4%)
	Inability to communicate	26 (0.1%)
	Learning disability	9,156 (51.3%)
	Mental illness	647 (3.6%)
	Other	184 (1.0%)
	Unknown[a]	24 (0.1%)
Total		**17,849**

[a] no information about diagnosis available in the record

Table A2. Number of Local Authority (LA) and private (P) guardianships, by local authority and year

	2013-14		2014-15		2015-16		2016-17		2017-18		2018-19		2019-20		2020-21		2021-22		2022-23	
	LA	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**	**LA**	**P**
Aberdeen City	15	62	25	36	26	52	29	56	17	61	30	64	24	54	25	39	43	59	41	64
Aberdeenshire	9	63	24	56	22	59	20	78	23	86	29	67	29	76	26	37	34	69	46	60
Angus	7	24	15	29	13	35	26	29	26	45	26	32	25	41	26	20	39	51	32	57
Argyll and Bute	9	17	7	26	16	26	8	29	9	30	*	38	17	26	10	31	12	31	21	30
City of Edinburgh	27	88	23	83	49	95	58	129	45	121	70	134	81	140	55	111	87	150	101	157
Clackmannanshire	*	7	6	14	*	28	*	31	6	24	6	22	6	17	*	16	*	28	8	30
Dumfries and Galloway	13	33	19	41	47	72	33	85	27	87	45	102	29	98	26	60	33	106	42	108
Dundee City	39	57	29	66	21	49	32	75	25	58	29	70	39	57	16	37	28	59	37	70
East Ayrshire	22	27	28	53	23	78	24	64	35	64	25	59	36	60	22	34	44	43	29	66
East Dunbartonshire	*	34	*	36	*	37	6	30	*	45	8	36	8	47	*	27	6	35	6	38
East Lothian	10	22	19	19	17	30	8	26	11	40	16	32	17	36	6	27	12	46	18	50
East Renfrewshire	*	17	6	29	7	30	*	26	7	38	*	30	*	26	6	36	10	35	*	38
Eilean Siar		*		*	*	*	*	24	*	13	*	16		14		*	*	11	*	*
Falkirk	22	32	33	48	27	65	25	54	32	67	24	67	31	79	28	45	29	73	20	87
Fife	56	105	48	134	70	145	59	146	102	161	63	166	54	149	43	91	58	133	79	156
Glasgow City	45	307	44	336	54	324	43	326	55	388	55	394	62	448	31	294	73	363	54	346
Highland	32	79	46	82	46	101	88	115	66	99	67	121	67	131	43	73	82	183	77	146
Inverclyde	*	17	7	14	9	11	12	26	8	23	9	21	10	14	8	12	14	39	9	35
Midlothian	*	13	*	21	12	20	10	23	15	38	17	37	14	25	12	21	17	31	23	35
Moray	*	12	8	25	11	33	12	43	12	26	6	38	10	22	*	23	10	34	15	29
North Ayrshire	14	48	19	64	8	58	18	69	11	70	28	61	28	61	16	53	27	86	24	76
North Lanarkshire	25	140	34	141	41	147	30	153	60	177	58	192	50	176	32	90	56	142	65	159
Orkney	*	10	*	8	*	13	*	*	*	*	*	*	6	11	9	17	6	11	6	*
Perth and Kinross	12	61	17	52	16	48	27	51	39	61	25	63	35	76	37	49	47	95	32	89
Renfrewshire	21	69	23	88	36	105	25	90	25	85	20	109	26	83	27	59	22	79	36	101
Scottish Borders	8	23	10	36	12	28	13	29	10	48	15	37	13	32	9	20	10	57	13	36
Shetland	*	*		*	*	*	*	*	*	*	*	*	*	6	*	*	*	10	7	*
South Ayrshire	9	48	17	67	22	76	16	74	26	90	25	91	19	80	18	62	27	81	37	76
South Lanarkshire	34	117	35	179	38	136	46	181	54	156	36	171	47	190	34	116	42	149	45	164
Stirling	13	38	8	26	6	28	11	53	18	31	16	42	23	39	9	21	16	47	15	49
West Dunbartonshire	8	30	8	43	11	46	9	37	8	24	*	34	9	26	7	20	9	33	13	44
West Lothian	11	58	12	53	7	34	18	63	16	59	15	49	20	70	17	45	23	102	28	91
Scotland	485	1662	580	1914	686	2025	724	2226	800	2326	784	2406	841	2410	611	1597	922	2471	986	2504

* n<=5 or secondary suppression to maintain confidentiality

Table A3. Granted guardianships 2022-23 by guardianship status, n (%)

Characteristic	Total	New guardianship	Renewal
Gender			
Female	1670 (47.7%)	1587 (47.9%)	83 (44.9%)
Male	1831 (52.3%)	1729 (52.1%)	102 (55.1%)
Age			
16-24	786 (22.5%)	732 (22.1%)	54 (29.2%)
25-44	564 (16.1%)	503 (15.2%)	61 (33.0%)
45-64	594 (17.0%)	557 (16.8%)	37 (20.0%)
65+	1557 (44.5%)	1524 (46.0%)	33 (17.8%)
Diagnosis			
Acquired Brain Injury	229 (6.5%)	212 (6.4%)	17 (9.2%)
Alcohol Related Brain Damage	168 (4.8%)	157 (4.7%)	11 (5.9%)
Dementia/ Alzheimer's Disease	1284 (36.7%)	1269 (38.3%)	15 (8.1%)
Inability to communicate	*	*	*
Learning Disability	1612 (46.0%)	1482 (44.7%)	130 (70.3%)
Mental Illness	151 (4.3%)	142 (4.3%)	9 (4.9%)
Other	*	*	*
Length			
0 - 3	1126 (32.2%)	1093 (33.0%)	33 (17.8%)
4 - 5	1727 (49.3%)	1626 (49.0%)	101 (54.6%)
> 5	523 (14.9%)	475 (14.3%)	48 (25.9%)
Indefinite	125 (3.6%)	*	*
Guardian status			
Local authority	988 (28.2%)	931 (28.1%)	57 (30.8%)
Private	2513 (71.8%)	2385 (71.9%)	128 (69.2%)

* n<=5 or secondary suppression to maintain confidentiality

Table A4. Proportion of renewed orders by age, gender and year

	16-24 years		25-44 years		45-64 years		65+ years	
	Female	Male	Female	Male	Female	Male	Female	Male
2013-14	10.2%	7.9%	15.6%	13.6%	12.4%	10.4%	2.8%	3.3%
2014-15	13.6%	11.1%	18.1%	18.8%	13.6%	16.4%	4.1%	5.1%
2015-16	14.2%	15.1%	16.7%	19.8%	17.3%	17.0%	3.7%	4.8%
2016-17	22.8%	19.1%	32.4%	24.5%	16.5%	20.2%	5.7%	5.5%
2017-18	18.6%	25.0%	37.9%	31.4%	20.1%	25.2%	6.5%	6.5%
2018-19	25.2%	25.5%	36.5%	36.7%	29.1%	26.0%	8.8%	9.1%
2019-20	32.7%	28.9%	34.3%	43.7%	33.6%	29.5%	8.1%	7.7%
2020-21	14.1%	10.6%	16.3%	19.3%	11.4%	14.5%	2.0%	4.0%
2021-22	6.9%	5.9%	14.3%	11.4%	9.5%	7.4%	2.4%	2.3%
2022-23	7.9%	6.3%	11.4%	10.4%	7.1%	5.6%	1.9%	2.4%

Table A5.Granted guardianships orders (new and renewed) 2022-23 by guardian status, n (%)

Characteristic	Total	Local authority	Private
Gender			
Female	1670 (47.7%)	466 (47.2%)	1204 (47.9%)
Male	1831 (52.3%)	522 (52.8%)	1309 (52.1%)
Age			
16-24	786 (22.5%)	84 (8.5%)	702 (27.9%)
25-44	564 (16.1%)	159 (16.1%)	405 (16.1%)
45-64	594 (17.0%)	248 (25.1%)	346 (13.8%)
65+	1557 (44.5%)	497 (50.3%)	1060 (42.2%)
Primary diagnosis[a]			
Acquired Brain Injury	229 (6.5%)	66 (6.7%)	163 (6.5%)
Alcohol Related Brain Damage	168 (4.8%)	98 (9.9%)	70 (2.8%)
Dementia/ Alzheimer's Disease	1284 (36.7%)	370 (37.4%)	914 (36.4%)
Inability to communicate	*	*	*
Learning Disability	1612 (46.0%)	348 (35.2%)	1264 (50.3%)
Mental Illness	151 (4.3%)	83 (8.4%)	68 (2.7%)
Other	43 (1.2%)	20 (2.0%)	23 (0.9%)
Length of guardianship			
0 - 3	1126 (32.2%)	557 (56.4%)	569 (22.6%)
4 - 5	1727 (49.3%)	357 (36.1%)	1370 (54.5%)
> 5	523 (14.9%)	50 (5.1%)	473 (18.8%)
Indefinite	125 (3.6%)	24 (2.4%)	101 (4.0%)
Guardianship status			
New	3316 (94.7%)	931 (94.2%)	2385 (94.9%)
Renewal	185 (5.3%)	57 (5.8%)	128 (5.1%)

[a]Primary diagnosis does not add to Total as there were 11 people with guardianships who had no recorded diagnosis

Table A6. Granted guardianships 2022-23 by diagnosis, n (%)

Characteristic	Total (n=3,501)	ABI (n=229)	ARBD (n=168)	Dementia (n=1284)	Learning Disability (n=1612)	Mental Illness (n=151)	Other (n=43)
Gender							
Female	1670 (47.7%)	92 (40.2%)	58 (34.5%)	804 (62.6%)	614 (38.1%)	70 (46.4%)	24 (55.8%)
Male	1831 (52.3%)	137 (59.8%)	110 (65.5%)	480 (37.4%)	998 (61.9%)	81 (53.6%)	19 (44.2%)
Age							
16-24	786 (22.5%)	14 (6.1%)	*	*	747 (46.3%)	7 (4.6%)	7 (16.3%)
25-44	564 (16.1%)	33 (14.4%)	*	*	495 (30.7%)	22 (14.6%)	6 (14.0%)
45-64	594 (17.0%)	95 (41.5%)	75 (44.6%)	78 (6.1%)	273 (16.9%)	57 (37.7%)	11 (25.6%)
65+	1557 (44.5%)	87 (38.0%)	85 (50.6%)	1200 (93.5%)	97 (6.0%)	65 (43.0%)	19 (44.2%)
Length of guardianship							
0 - 3	1126 (32.2%)	83 (36.2%)	79 (47%)	393 (31%)	472 (29%)	75 (50%)	19 (44%)
4 - 5	1727 (49.3%)	111 (48.5%)	73 (43%)	621 (48%)	842 (52%)	58 (38%)	16 (37%)
> 5	523 (14.9%)	29 (12.7%)	*	171 (13%)	286 (18%)	*	*
Indefinite	125 (3.6%)	6 (2.6%)	*	99 (8%)	12 (1%)	*	*
Guardian							
LA	988 (28%)	66 (29%)	98 (58%)	370 (29%)	348 (22%)	83 (55%)	20 (47%)
Private	2513 (72%)	163 (71%)	70 (42%)	914 (71%)	1264 (78%)	68 (45%)	23 (53%)
Guardianship status							
New	3316 (95%)	212 (93%)	157 (93%)	1269 (99%)	1482 (92%)	142 (94%)	*
Renewed	185 (5%)	17 (7%)	11 (7%)	15 (1%)	130 (8%)	9 (6%)	*

** n<5 or secondary suppression to maintain confidentiality*

Note: 11 people with guardianships had no recorded diagnosis and the numbers for inability to communicate were small and could have led to identification therefore neither are included in this table

Table A7. Length of guardianships (years) by age group

	16-24 years				25-44 years				45-64 years				65+ years			
Year	**0 - 3**	**4 - 5**	**> 5**	**Indef**	**0 - 3**	**4 - 5**	**> 5**	**Indef**	**0 - 3**	**4 - 5**	**> 5**	**Indef**	**0 - 3**	**4 - 5**	**> 5**	**Indef**
2013-14	26.8%	44.9%	16.5%	11.8%	23.2%	38.7%	25.3%	12.8%	28.9%	39.1%	16.9%	15.1%	16.9%	19.1%	11.0%	53.0%
2014-15	26.8%	49.5%	16.5%	7.2%	27.7%	43.1%	19.0%	10.1%	32.0%	36.9%	16.5%	14.6%	17.8%	19.9%	11.6%	50.7%
2015-16	30.1%	46.5%	17.6%	5.8%	34.8%	38.7%	20.1%	6.4%	31.0%	42.6%	15.8%	10.5%	19.7%	24.3%	12.5%	43.5%
2016-17	24.1%	51.9%	14.8%	9.2%	21.0%	52.4%	19.0%	7.6%	31.4%	41.5%	16.9%	10.2%	19.2%	29.1%	20.7%	31.0%
2017-18	25.3%	48.9%	22.7%	3.0%	23.6%	47.0%	25.8%	3.5%	32.8%	44.4%	17.2%	5.6%	21.0%	38.2%	19.7%	21.1%
2018-19	26.0%	53.5%	18.9%	1.6%	25.6%	48.6%	23.0%	2.8%	32.9%	48.1%	14.8%	4.2%	23.1%	41.9%	16.9%	18.1%
2019-20	26.5%	50.4%	21.8%	1.3%	28.1%	47.0%	23.8%	1.2%	28.2%	45.9%	22.1%	3.8%	24.9%	45.4%	16.3%	13.4%
2020-21	32.3%	48.9%	17.9%	0.9%	24.8%	44.2%	28.9%	2.1%	34.1%	48.9%	14.8%	2.2%	29.0%	46.4%	14.2%	10.4%
2021-22	30.6%	52.2%	16.1%	1.1%	30.0%	47.6%	21.8%	0.6%	36.8%	47.0%	14.0%	2.2%	30.4%	47.6%	14.2%	7.9%
2022-23	36.5%	49.7%	13.2%	0.5%	24.1%	52.5%	22.7%	0.7%	35.2%	48.1%	14.8%	1.9%	31.7%	48.4%	13.0%	6.8%

Indef: Indefinite order

Table A8. Number of guardianships granted, by local authority and year

Local Authority	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Aberdeen City	77	61	78	85	78	94	78	64	102	105
Aberdeenshire	72	80	81	98	109	96	105	63	103	106
Angus	31	44	48	55	71	58	66	46	90	89
Argyll and Bute	26	33	42	37	39	41	43	41	43	51
City of Edinburgh	115	106	144	187	166	204	221	166	237	258
Clackmannanshire	9	20	33	36	30	28	23	19	30	38
Dumfries and Galloway	46	60	119	118	114	147	127	86	139	150
Dundee City	96	95	70	107	83	99	96	53	87	107
East Ayrshire	49	81	101	88	99	84	96	56	87	95
East Dunbartonshire	36	41	40	36	50	44	55	31	41	44
East Lothian	32	38	47	34	51	48	53	33	58	68
East Renfrewshire	21	35	37	29	45	35	30	42	45	43
Eilean Siar	*	*	16	29	16	19	14	7	13	8
Falkirk	54	81	92	79	99	91	110	73	102	107
Fife	161	182	215	205	263	229	203	134	191	235
Glasgow City	352	380	378	369	443	449	510	325	436	400
Highland	111	128	147	203	165	188	198	116	265	223
Inverclyde	21	21	20	38	31	30	24	20	53	44
Midlothian	18	25	32	33	53	54	39	33	48	58
Moray	15	33	44	55	38	44	32	27	44	44
North Ayrshire	62	83	66	87	81	89	89	69	113	100
North Lanarkshire	165	175	188	183	237	250	226	122	198	224
Orkney	13	9	18	8	8	9	17	26	17	12
Perth and Kinross	73	69	64	78	100	88	111	86	142	121
Renfrewshire	90	111	141	115	110	129	109	86	101	137
Scottish Borders	31	46	40	42	58	52	45	29	67	49
Shetland	*	*	6	8	7	7	8	6	12	12
South Ayrshire	57	84	98	90	116	116	99	80	108	113
South Lanarkshire	151	214	174	227	210	207	237	150	191	209
Stirling	51	34	34	64	49	58	62	30	63	64
West Dunbartonshire	38	51	57	46	32	39	35	27	42	57
West Lothian	69	65	41	81	75	64	90	62	125	119
Scotland	**2147**	**2494**	**2711**	**2950**	**3126**	**3190**	**3251**	**2208**	**3393**	**3490**

** n<5 or secondary suppression to maintain confidentiality*

Note: People with guardianships but no recorded local authority are not included in this table

Table A9. Rate of granted guardianships with mid-year population estimates (≥16 years) by local authority

Local Authority	Rate	Orders	Population
Aberdeen City	54.8	105	191,570
Aberdeenshire	49.5	106	214,112
Angus	91.3	89	97,481
Argyll and Bute	69.1	51	73,779
City of Edinburgh	57.6	258	447,644
Clackmannanshire	89.1	38	42,663
Dumfries and Galloway	119.1	150	125,908
Dundee City	86.3	107	124,016
East Ayrshire	93.8	95	101,228
East Dunbartonshire	49.2	44	89,372
East Lothian	75.8	68	89,758
East Renfrewshire	55.9	43	76,879
Eilean Siar	35.4	8	22,580
Falkirk	80.4	107	133,136
Fife	75.6	235	311,050
Glasgow City	74.7	400	535,249
Highland	111.5	223	199,930
Inverclyde	68.2	44	64,503
Midlothian	75.9	58	76,399
Moray	54.7	44	80,469
North Ayrshire	89.0	100	112,329
North Lanarkshire	80.1	224	279,794
Orkney	63.2	12	18,987
Perth and Kinross	93.4	121	129,592
Renfrewshire	91.2	137	150,156
Scottish Borders	50.4	49	97,297
Shetland	63.7	12	18,836
South Ayrshire	118.7	113	95,206
South Lanarkshire	78.3	209	266,930
Stirling	81.5	64	78,522
West Dunbartonshire	78.6	57	72,556
West Lothian	79.1	119	150,447
Scotland	**76.4**	**3490**	**4,568,378**

Note: People with guardianships but no recorded local authority are not included in this table

Table A10. Number of new and renewed granted guardianships, by local authority and year

	2013-14		2014-15		2015 -16		2016-17		2017-18		2018-19		2019-20		2020-21		2021-22		2022-23	
Local Authority	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**	**N**	**R**
Aberdeen City	70	7	56	5	74	*	79	6	74	*	80	14	64	14	62	*	92	10	101	*
Aberdeenshire	68	*	72	8	71	10	77	21	90	19	81	15	88	17	57	6	101	*	102	*
Angus	31		42	*	42	6	42	13	66	5	43	15	45	21	42	*	89	*	88	*
Argyll and Bute	25	*	31	*	39	*	31	6	36	*	34	7	35	8	35	6	42	*	41	10
City of Edinburgh	105	10	95	11	131	13	170	17	146	20	172	32	177	44	149	17	230	7	251	7
Clackmannanshire	9		17	*	30	*	33	*	26	*	24	*	19	*	14	5	27	*	35	*
Dumfries and Galloway	41	5	44	16	103	16	101	17	87	27	93	54	96	31	79	7	131	8	141	9
Dundee City	92	*	92	*	67	*	100	7	70	13	93	6	83	13	47	6	85	*	106	*
East Ayrshire	43	6	67	14	87	14	69	19	77	22	65	19	66	30	50	6	82	5	89	6
East Dunbartonshire	34	*	38	*	38	*	32	*	34	16	33	11	47	8	28	*	36	5	38	6
East Lothian	28	*	35	*	36	11	26	8	36	15	37	11	39	14	31	*	57	*	67	*
East Renfrewshire	20	*	35		32	5	26	*	39	6	32	*	23	7	38	*	43	*	41	*
Eilean Siar	*		5		16		29		12	*	17	*	14		7		13		8	
Falkirk	50	*	64	17	80	12	66	13	85	14	82	9	80	30	67	6	100	*	104	*
Fife	149	12	166	16	201	14	178	27	232	31	177	52	168	35	122	12	186	5	227	8
Glasgow City	344	8	362	18	342	36	315	54	366	77	355	94	402	108	301	24	414	22	385	15
Highland	102	9	118	10	133	14	176	27	137	28	155	33	153	45	108	8	259	6	219	*
Inverclyde	18	*	19	*	15	5	31	7	23	8	24	6	18	6	19	*	51	*	43	*
Midlothian	18		23	*	24	8	26	7	45	8	42	12	30	9	32	*	47	*	57	*
Moray	14	*	27	6	41	*	53	*	33	5	38	6	30	*	27		43	*	44	
North Ayrshire	55	7	77	6	61	5	72	15	66	15	77	12	64	25	60	9	98	15	88	12
North Lanarkshire	145	20	140	35	156	32	151	32	178	59	178	72	152	74	115	7	194	*	221	*
Orkney	11	*	8	*	12	6	6	*	7	*	5	*	15	*	24	*	16	*	11	*
Perth and Kinross	64	9	65	*	61	*	67	11	85	15	78	10	92	19	80	6	134	8	113	8
Renfrewshire	88	*	105	6	135	6	97	18	88	22	104	25	85	24	75	11	98	*	135	*
Scottish Borders	28	*	40	6	35	5	37	5	51	7	43	9	37	8	23	6	67		49	
Shetland	*		*		6		8		7		7		6	*	6		11	*	9	*
South Ayrshire	51	6	73	11	87	11	73	17	95	21	90	26	72	27	68	12	86	22	95	18
South Lanarkshire	140	11	192	22	157	17	202	25	170	40	160	47	182	55	139	11	164	27	194	15
Stirling	44	7	31	*	29	5	61	*	44	5	45	13	47	15	27	*	56	7	52	12
West Dunbartonshire	35	*	50	*	55	*	43	*	29	*	35	*	33	*	26	*	41	*	51	6
West Lothian	64	5	55	10	35	6	59	22	61	14	45	19	63	27	52	10	104	21	101	18
Scotland	**1991**	**156**	**2248**	**246**	**2431**	**280**	**2536**	**414**	**2595**	**531**	**2544**	**646**	**2525**	**726**	**2010**	**198**	**3197**	**196**	**3306**	**184**

* n<5 *or secondary suppression to maintain confidentiality;* N: new guardianship; R: renewal

Table A11. Relative change to last year by age and local authority

	Age Group			
Local Authority	**16-24**	**25-44**	**45-64**	**65+**
Aberdeen City	-7%	-18%	46%	10%
Aberdeenshire	10%	-15%	29%	0%
Angus	-17%	111%	-9%	-14%
Argyll and Bute	20%	-56%	300%	15%
City of Edinburgh	-22%	19%	38%	8%
Clackmannanshire	0%	100%	80%	7%
Dumfries and Galloway	20%	56%	0%	-3%
Dundee City	92%	129%	-33%	18%
East Ayrshire	31%	33%	-25%	13%
East Dunbartonshire	-8%	-14%	-14%	43%
East Lothian	25%	-17%	-20%	43%
East Renfrewshire	50%	50%	-20%	-45%
Eilean Siar	-100%		-100%	-11%
Falkirk	-17%	83%	27%	-4%
Fife	76%	32%	12%	2%
Glasgow City	-4%	10%	6%	-17%
Highland	-30%	-14%	-8%	-11%
Inverclyde	-47%	-17%	-50%	73%
Midlothian	143%	-40%	38%	9%
Moray	-33%	-17%	0%	14%
North Ayrshire	-6%	38%	-28%	-15%
North Lanarkshire	82%	5%	-22%	12%
Orkney	-67%	0%	-67%	-13%
Perth and Kinross	-32%	-31%	-38%	0%
Renfrewshire	53%	42%	14%	38%
Scottish Borders	-42%	11%	-27%	-26%
Shetland	0%	0%	200%	-50%
South Ayrshire	38%	6%	-5%	-2%
South Lanarkshire	25%	-15%	-3%	17%
Stirling	19%	-7%	150%	-24%
West Dunbartonshire	275%	133%	-14%	4%
West Lothian	-11%	69%	-14%	-14%

Table A12. Relative change to 2022-23 by diagnosis and local authority

Local Authority	Dementia	LD	Mental Illness	ABI	ARBD	Other
Aberdeen City	-24%	9%	83%	-13%	20%	
Aberdeenshire	8%	9%	-40%	75%	-33%	
Angus	-20%	39%	-78%	-33%	100%	-100%
Argyll and Bute	12%	35%	-25%	-33%		-100%
City of Edinburgh	23%	6%	-21%	-14%	-8%	67%
Clackmannanshire	0%	29%			0%	100%
Dumfries and Galloway	-11%	13%	100%	33%	25%	
Dundee City	-14%	50%	200%	300%	100%	-100%
East Ayrshire	0%	12%	20%	150%	0%	0%
East Dunbartonshire	50%	-21%		-33%	200%	
East Lothian	59%	-28%	50%	0%		
East Renfrewshire	-41%	58%	-100%	-25%	-100%	
Eilean Siar	0%	-100%		-100%		
Falkirk	-26%	13%	0%	700%	100%	
Fife	-1%	52%	-29%	36%	140%	300%
Glasgow City	-17%	1%	0%	35%	-28%	-25%
Highland	-5%	-28%	13%	60%	60%	0%
Inverclyde	56%	-31%	0%	0%	-60%	
Midlothian	29%	21%	-67%	150%	33%	0%
Moray	10%	-37%	300%	-100%	67%	
North Ayrshire	-13%	-4%	-33%	40%	-67%	
North Lanarkshire	8%	12%	44%	8%	33%	
Orkney	17%	-60%		0%		
Perth and Kinross	-1%	-33%	-67%	175%	-50%	0%
Renfrewshire	26%	32%	100%	250%	43%	-33%
Scottish Borders	-15%	-32%	-100%	0%		
Shetland	-80%	29%				
South Ayrshire	-4%	-3%	40%	167%	60%	-100%
South Lanarkshire	11%	8%	86%	-15%	0%	100%
Stirling	-17%	14%	0%	0%	0%	
West Dunbartonshire	13%	167%	50%	-80%	100%	
West Lothian	-17%	-3%	-20%	40%	67%	

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