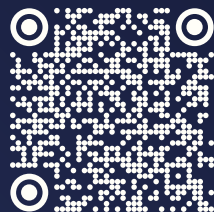


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**Appointment as  
Financial &  
Welfare Guardian**  
what is involved?





### What is a Financial and Welfare Guardian?

Financial and/or Welfare Guardians are appointed by the court in terms of the Adults with Incapacity (Scotland) Act 2000 to look after the financial and/or welfare affairs of someone who is not able to do so for themselves. The order granted by the court gives the Guardian powers to manage the person's financial affairs on an ongoing basis and powers in relation to the person's personal welfare.

The court can appoint someone as a person's Financial Guardian only, Welfare Guardian only or combined financial and Welfare Guardian.

### Why would Guardianship powers be needed?

If a person has not granted a Power of Attorney giving someone whom they trust legal authority to act on their behalf in relation to financial and/or welfare matters and they subsequently become incapable, i.e. unable to act on their own behalf, as a result of illness (e.g. dementia) or an accident, a court order may be required to give someone legal authority to act on their behalf.

Without formal legal authority, nobody has the right to act on someone else's behalf in relation to their financial affairs or personal welfare – not even their spouse or next of kin.

### Who can be appointed as Guardian?

Anyone with an interest in the adult's financial affairs or personal welfare can apply to the court to be appointed as their Financial and/or Welfare Guardian, including their spouse or partner, a family member, friend or professional, e.g. solicitor, accountant etc.

### What powers do Guardians have?

The court order appointing the Guardian will set out their powers in relation to the adult's financial and property affairs and personal welfare. The extent of the powers specified in the court order will depend on the adult's circumstances, but generally the financial powers include power to deal with the adult's bank accounts, power to authorise expenditure on the adult's behalf and power to sell or rent the adult's house (if appropriate). Welfare powers tend to include power to decide on appropriate care and accommodation for the adult, power to consent to medical treatment and power to make decisions about the adult's diet, dress and personal appearance.

### What are the duties of a Guardian?

Once appointed by the court, the first duty of a Financial or Financial and Welfare Guardian is usually to obtain caution, which is a form of insurance to protect the adult against loss caused by fraudulent or negligent actions of the Guardian. Caution is not required when the court appointment is of a Welfare Guardian only.

The Guardian must then submit an Inventory and Management Plan to The Office of the Public Guardian. The Inventory lists all items of the adult's estate over which the Guardian has been given authority by the court and the value of those assets as at the date the Guardian was appointed by the court.

The Management Plan sets out details of how the Guardian intends to manage the adult's property and financial affairs. The purpose of the Management Plan is to satisfy the Public Guardian that the Guardian will be taking a proactive role in managing the adult's financial affairs, given that the primary purpose of the Guardian's appointment is to benefit the adult rather than to preserve their estate.

The Inventory and draft Management Plan must be submitted to The Office of the Public Guardian within three months of the Guardian's appointment by the court. Until the draft Management Plan has been approved by the Public Guardian, the Guardian will only have limited powers to ingather and take control of the adult's assets and to make payments necessary for the adult's day-to-day needs. Again, the Inventory and Management Plan are not required where the court appointment is of a Welfare Guardian only.

Thereafter, the Financial or Financial and Welfare Guardian must keep good records detailing funds spent on behalf of the adult with vouchers if appropriate (generally speaking, for expenditure over £100), funds invested on behalf of the adult etc. These records will form the basis of the accounts which the Guardian must submit to The Office of the Public Guardian on an annual basis detailing their transactions with the adult's estate. Again, annual accounts are not required where the appointment is of a Welfare Guardian only.

### Is there anywhere Guardians can refer to for guidance when acting?

The Adults with Incapacity (Scotland) Act 2000 sets out five principles which Guardians must adhere to when making decisions on behalf of the adult:

1. Any decision or action taken must be for the benefit of the adult;
2. Any action taken should be the least restrictive option;
3. The Guardian must take into account the adult's past and present wishes so far as these are known;
4. The views of the adult, their nearest relative, primary carer, Attorney or any other interested person must be taken into account when making a decision or taking an action on the adult's behalf; and
5. Wherever possible, the adult should be encouraged to exercise any skills they have in relation to financial/property matters and personal welfare (as appropriate).

**In Scotland, a Guardianship Order lets someone make welfare or financial decisions for an adult who can't do so themselves.**

