



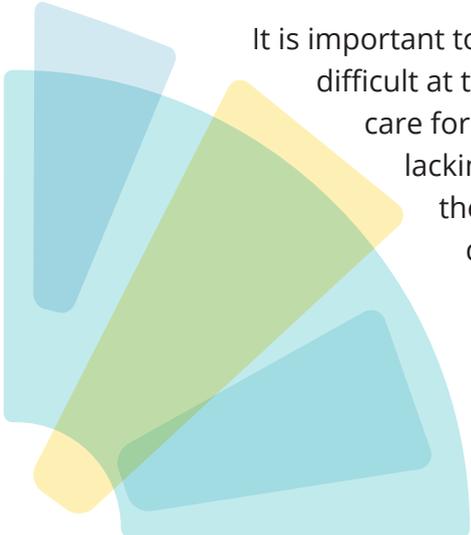
LEGAL MATTERS

For many carers, thinking about planning for the future and supporting the person you care for to make important decisions can be a worrying thought.

This factsheet introduces some of the legal issues around capacity, for more detailed information you should contact the Carers Centre, your local Health and Social Care team, a local solicitor or the Office of the Public Guardian.

Adults with Incapacity

All adults aged 16 or over have a right to make their own decisions and it must be assumed that someone has capacity to act and make their own decisions unless there is evidence to suggest otherwise.



It is important to remember, even if it is difficult at times, that the person you care for cannot be regarded as lacking capacity just because they make unwise, or unusual decisions, or because they have a particular diagnosis, illness or condition.

However, there are a number of reasons,

which can affect someone's ability to make decisions
These include:

- ▶ disabilities such as dementia, brain injury or severe mental illness
- ▶ physical conditions such as a stroke or severe hearing impairment
- ▶ having a learning disability

The Adults with Incapacity (Scotland) Act 2000

provides a framework for family members and friends to make decisions on behalf of the person they are caring for in relation to welfare, health care and financial matters. These powers can also be delegated to others.

Generally, mental capacity means having the ability to make decisions or take actions related to daily living.

In a legal context, mental capacity refers to an individual's ability to make decisions, which may have legal consequences either for themselves or others

This can include:

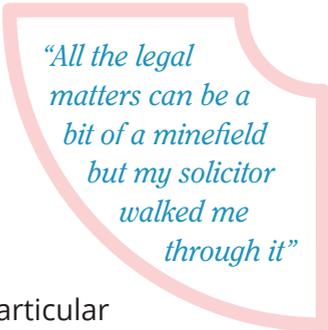
- ▶ making a contract with someone
- ▶ buying and selling things
- ▶ deciding about medical treatment
- ▶ managing money

The Act recognises that:
someone may be capable of making certain types of decisions but not others and



“If I could give one piece of advice to other carers it would be to get things in order as soon as you can - its like ticking things off the list in your head”

that this may depend on the complexity of the decision to be made. In addition, someone's capacity to make decisions can change



“All the legal matters can be a bit of a minefield but my solicitor walked me through it”

...and states that:

an adult lacks capacity to make a particular decision when there is evidence that he or she is unable to:

- ▶ understand the information relevant to the decision; or
- ▶ make a decision based on the information given; or
- ▶ communicate the decision; or
- ▶ remember the decision.

Power of Attorney (PoA)

What is it?

This is a legal document giving someone else the authority to take actions or make decisions on your behalf or on behalf of the person you care for if they are unable to do so. This could relate to financial or property matters and/or personal welfare. This document can be drawn up at any time when the individual still has capacity.

There are two types of PoA:

- ▶ continuing PoA
- ▶ welfare PoA

A Continuing PoA allows an attorney to make decisions to do with money or property.

A Welfare PoA allows the attorney to make decisions about health, personal welfare or both.

As a carer you can be an attorney for the person being cared for but it may be an idea to name more than one person in case you become ill yourself.

Taking out PoA is good practice for anyone whether they are caring or not as it allows you to decide who you want to be responsible for your affairs in the future, if the need ever arises.

It is equally important for you to create a PoA for yourself to protect yourself in the future.

How do you get a PoA?

Any local solicitor should be able to assist you and the person you care for to draft a PoA and provide legal advice on the matter. Alternatively, some companies and stationery shops sell PoA packs. The Office of the Public Guardian's website illustrates what the PoA document could look like.

How much does it cost?

A professional may charge you to draw up a PoA and prices may vary. The PoA should include a certificate signed by a practising solicitor or by a registered and licensed medical doctor stating that you are capable of understanding the PoA and they may charge a fee for this service.

The Office of the Public Guardian, Scotland (OPG) charges a registration fee for this service. To find out our current fee, please either contact the office or view the fee

“It was really straightforward getting the power of attorney; we got it for my mum but my husband and I thought we would get it done at the same time”

schedule on the website: www.publicguardian-scotland.gov.uk

Guardianship Order

A Guardianship Order can be sought when someone is unable to make any decisions due to a mental disorder.

What does it do?

The order allows the appointed guardian to make decisions for the person with incapacity even if that person does not understand or is unable to make the decision to allow a guardian to be appointed. The order could allow whoever has been appointed by the Sheriff, to manage on an on-going basis the financial or welfare affairs or both, of someone who is unable through incapacity to deal with those matters.

How do you make an application?

An application called a “Summary Application” is made to the sheriff court. The application will require to be sent along with two medical reports (which are completed by two individual registered and licensed medical doctors) and other supporting documentation.

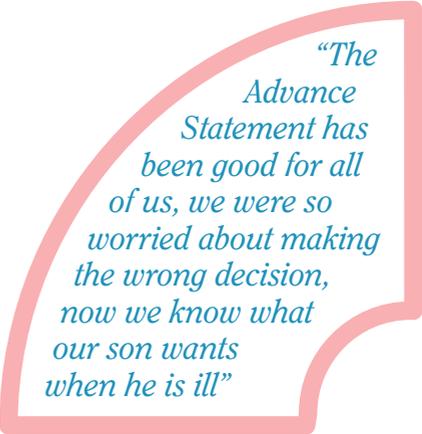
Mental Health (Care and Treatment) Act 2003

This is legislation that supports and safeguards people with a mental health disorder. The Act covers detention in a hospital setting and some treatment in the community. It allows for three types of detention/

treatment, including emergency detention orders, short-term detention orders and compulsory treatment orders.

Advanced statements

This is a statement made when a person with a mental health disorder is well, about how they wish to be treated if they become unwell. It could be in relation to diet, or medication or even care of pets etc. The statement has to be taken into account when decisions are being made.



“The Advance Statement has been good for all of us, we were so worried about making the wrong decision, now we know what our son wants when he is ill”





Borders Carers Centre (SCIO)

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