Adults with Incapacity: Delayed discharge good practice guidance 2023

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Scottish Government
Riaghaltas na h-Alba

1. Adults with Incapacity (AWI)

Good practice guidance to support adults discharged from hospital

Delayed discharges continue to present huge challenges across the country. Every patient who is medically fit to leave hospital should be able to do so. The Scottish Government is committed to working closely with local delivery partners to reduce delayed discharges. Scottish Government has set Health and Social Care Partnerships (HSCPs) targets to bring delayed discharge numbers down to pre-pandemic levels.

This guidance aims to provide HSCPs models of good practice to support a reduction in delayed discharges where adults lack capacity. This should be read in conjunction with the guidance issued jointly last year by the Scottish Government and the Mental Welfare Commission (MWC) as well as the Scottish Government key actions guidance.

Over winter 2022 to 2023 we met with the majority of HSCPs across Scotland to learn about the pressures in any given area and good practices that had been developed. These good practices are shared in this guidance in the hope they can support change and improvement in other areas.

The meetings followed a format of questions as follows:

- Can you tell us of any good practice that you can share with us at present?
- Can you tell us of any challenges that you are experiencing?
- How do you enact section 13ZA of the Social Work (Scotland) Act 1968?
- Are you experiencing any issues with the Court system?
- What is the balance between local authority and private guardianship applications?
- Have you issues with Mental Health Officer (MHO) recruitment and retention and senior practitioner status?
- Have you got links with local solicitors who will act in private Guardianship applications?
- Do you have systems in place to supervise the progress of private guardianship applications?
- Have you had issues with Legal Aid applications adding to delays
- Are there difficulties obtaining medical reports?
- Are Interim Orders being progressed?
- Is there involvement in Power of Attorney campaigns?
- What do you have in place to provide Supported Decision making?

From asking these questions we were able to identify particular pressures in each area and examples of good practice that improved performance.

2. Common issues raised

The most common issues raised during HSCP meetings were:

- a lack of trained MHOs, difficulty in recruiting MHOs and resulting MHO workload issues
- delays with the court system causing backlog and delays to hearings
- delays with the progression of private guardianships due to family complexities and some delays in private practice
- people being admitted to hospital with no Power of Attorney in place
- no MHO or social work staff as part of hospital teams or involved in discharge planning
- lack of consistency around the use and understanding of section 13ZA of the Social Work (Scotland) Act 1968 as a result of the Cheshire West case
- delays in accessing legal aid for families wishing to progress guardianship orders
- difficulty in accessing medical reports

These points were discussed, with many areas advising changes that they had implemented within their areas to improve practice to the process and for the person being supported.

3. Good practice examples

“We have appointed a specific MHO to chair all of our AWI meetings.”

A lack of experience of AWI legislation and process by the chair of AWI case discussions was causing a delay to the process. Since making this change the HSCP have improved their performance in relation to the time taken to convene and hear AWI case discussions with a subsequent effect of reducing delays overall.

“We have integrated a social worker and MHOs into two hospital teams across the East and West of our area. We also have social work assistants in these teams.”

The HSCP was having difficulty in co-ordinating what was happening in the ward setting with that of the need to have community supports in place. By introducing MHOs to the hospital teams AWI issues were picked up and progressed quickly. The social work assistants are making a change in the way that they are focussing on the discharge planning for those able to be discharged with appropriate care needs in place. By integrating MHOs and social work assistants into the hospital teams we were advised that the communication across the multi-disciplinary team had greatly

improved. Also, discharges were managed more closely to the point that delays were reducing.

“We have implemented a tracking system for all AWI delayed discharges, and we meet each morning to monitor the progress of these cases.”

This HSCP told us that they needed to implement a more robust process to keep an overview of their delays. By implementing a tracker system across the service, which is reviewed daily, the management team advised that they are now able to see every delayed discharge and the cause of the delay. This has helped them ensure the process is moved on at pace for the person awaiting discharge and that they are not being held in hospital due to a procedural issue.

“We have a prioritisation framework in place and guidance that all MHO’s work with. We also have a group of six sessional MHOs in the team working specifically on delayed discharge.”

This HSCP advised that they wanted to refocus their MHO team given underlying pressures of work and a lack of MHOs within the service. By recruiting sessional MHOs with a specific focus on delayed discharge where AWI was a feature they could quickly improve on the time for assessment and care management, given this was their sole priority. They advised that this has been helpful in reducing delays and also ensuring support to existing MHOs who are carrying other areas of legislative work.

“We have created a new Integrated Discharge Planning Hub made up of social workers, homecare, and admin staff. Staff from the hub update on AWI/DD daily. The hub has been in place since Christmas and has reduced the length of hospital stays for patients. Our MHOs manage the people on our discharge planning tracker.”

This HSCP advised that they had made the decision to completely review the way the MHO team and hospital discharge team were working, to precisely target delays where AWI was a factor. By implementing a specific hub approach, staffed by multi agency professionals, they are having daily and at times twice daily review discussions as a productive way of ensuring that hospital stays (where appropriate) are managed robustly, and that the person is discharged as a priority. The Head of Service advised that this thorough approach meant they were seeing the benefits of the work and were almost at a point where they may be able to prevent unnecessary admissions by implementing more robust community supports.

“We have refocussed to give staff the confidence to use supported decision making to enable the adult to make their own decision about moving rather than going direct to a guardianship order”

The HSCP refocussed on using supported decision making rather than going directly to a guardianship order and have reduced their AWI delayed discharges by 10 from the previous year. Previously if someone had been treated using authority from section47 of the Adults with Incapacity (Scotland)I Act 2000, then they were automatically considered to be lacking capacity and referred for a guardianship order. Now, they use the MWC tools for supported decision making, have ensured

the least restrictive option has been used in each case and that the individual has a voice.

There has since been a drop in referrals for guardianship. The idea is that they don't automatically go to a solicitor and apply for guardianship but speak to social work colleagues first to see if another option is possible.

This HSCP carried out an audit of AWI hospital delays. They scrutinised each individual to see if they could use supported decision making or advocacy and to see if pursuing a guardianship order was most appropriate. They had discussions with families. The topic of early interventions was discussed, for example, where people had delirium they sit with the patient for one or two weeks to give it an opportunity to resolve itself. Guardianship wasn't always necessary. This was joint work between health colleagues on the ward and social workers.

They are educating health colleagues in AWI and the guardianship process. They are encouraging their teams to have professional curiosity and to have confidence to provide support for decision making to avoid the guardianship route. They have now pushed for a greater sense of trust in professional judgement. For example, they are encouraging social workers to put in the person's notes that the person has 'insight' or 'they may lack capacity in certain areas' however, they have an understanding of what moving to a care home means, using MWC tool for support for decision making. They have looked for signs of the person's own voice by trawling case notes to see if the adult had noted any preferences at any point.

"We have a framework of supervision of private guardianship applications"

The HSCP has a tight framework of supervision of private guardianship applications to ensure that the family and their solicitor move the application along in good time. They discuss progress with the family along the way. At week 3 – social work checks in with family. At weeks 4/5 – a private solicitor should be identified. At week 6 – if a private solicitor is not identified a meeting is held with the family to discuss barriers. At week 8 – if no progress they have a candid discussion with the family on the appropriateness of them as guardians. Social work could take over at this point if no progress has been made. They have only had to do this once.

4. The use of section 13ZA social work (Scotland) Act 1968

All the areas that we interviewed advised that they did use section 13ZA where this was appropriate. Several areas advised that they had refreshed their guidance because of the MWC Authority To Discharge Report which can be accessed, as an outcome of the Cheshire West case outcome in line with deprivation of liberty.

Many other HSCPs advised us that they had implemented robust processes to ensure that any decisions as part of assessment and care management processes were appropriately recorded. They also would demonstrate and support good practice and decision making around the use of statutory powers. All HSCPs advised of their link to human rights principles and also to ensuring supported decision making around these issues.

5. Challenges

During this exercise we also heard of ongoing challenges that were being experienced across HSCPs.

“Local solicitors are taking too long to process legal aid applications.”

This was a common thread and was highlighted where families were applying for private guardianships. The legal aid process was described as cumbersome and time consuming and this delay contributed to the length of stay where the person was in hospital. Scottish Government officials are actively undertaking work to see what improvements can be made with this process.

“We have difficulty accessing psychiatrists to undertake assessments and to complete reports.”

This point was made by one of the more remote and rural areas where there were pressures in recruiting psychiatrists. The lack of adequate staff numbers was causing undue delays for people who were in hospital. We advised this particular area to escalate the matter within their Health Board area as a contributory issue to their delays.

“Local solicitors are slow in progressing private guardianship applications.”

This issue was raised in relation to progressing private guardianships. Staff advised that some private solicitors are unfamiliar with the AWI process and the need to work to timescales. This was often overlooked in terms of the person in hospital awaiting discharge. In response to this we advised of those areas who have an MHO linking with private solicitors to support them with the knowledge to progress the application to timescale. We also advised that we had heard from some areas where their own local authority area solicitors had informal discussions with private solicitors to guide them through the process. For those who had built good positive relationships with private solicitors this was not an issue.

“The Court process can be very slow.”

Some areas advised of delays with the Court process. We heard that some did not have established relationships with Sheriffs and so lacked confidence to approach them to try and resolve or understand the issue. In these situations SG can work with the HSCP and the courts to identify if any improvements to process can be made. Some areas did take the advantage of this offer of support.

“Our MHO capacity is difficult, and we are having difficulties recruiting.”

This was a common theme and one that was fully recognised by the team. In some areas MHOs are paid at a Senior Practitioner status given the complex and autonomous nature of the MHO role.

Some areas reported that, despite additional funding from the Scottish Government, they could not attract social workers to undertake MHO training given the workload commitments as well as their daily duties.

Other areas reported that they were able to recruit but this was often short lived as MHO's would move to neighbouring authorities which offered the senior practitioner payment as recognition of the status and complexity of the role.

The ability to pay the higher rate is being explored as the National Social Work Agency framework progresses and this will involve the Office of the Chief Social Work Advisor working with COSLA and trade union partners in attempts to resolve the terms and conditions issue as well as making the role more attractive.

6. Recommendations:

Through our discussion we have heard of lots of positive practice implemented to reduce pressures on delayed discharges where AWI was an underpinning factor. During the meetings we were able to share some of these good practice examples and encourage areas that were still facing pressures to implement some of the changes as advised. We were also able to engage directly with an area that was performing strongly to gain some inter HSCP support.

In light of winter pressures and planning we would encourage areas to review their delays where AWI is an issue and consider implementing the following actions:

1. Consideration should be given to sessional MHO recruitment to support the wider MHO workforce, and to potentially use these staff to focus specifically on delays where AWI is an issue.

2. Training – HSCPs should ensure their workforce is fully aware of AWI legislation and practice. The Scottish Government is funding NHS Education for Scotland and the Mental Welfare Commission to deliver AWI training to the health and social care workforce. This is ongoing and resources will continue to be added to the Turas page for AWI for the duration of the project, due to complete in February 2024. The page is accessible to anyone who is registered for a Turas account.

3. HSCPs should consider integrating social workers and at least one MHO to their Hospital Discharge teams. Those partnerships that have done this report reduced delayed discharges due to more robust discharge planning and an effective communication process across the wider multi-disciplinary team involved in care planning and support. This was highlighted as being particularly effective around engaging with medical staff regarding the need for their reports.

4. HSCPs should prioritise recording systems or AWI tracker processes to show the stage of the delay and highlight any emerging issues. Where possible we would encourage this information to be reviewed daily by senior management to ensure that the patient is progressing to discharge without delay. This

recommendation again supports good practice and the evidence from HSCPs who robustly manage their delays daily is that delays are reduced as a result.

5. HSCPs should have daily contact with support providers to be sure they have an accurate picture of social care staffing support and available support hours. Where this worked really well it was reducing delays to the point where admissions were prevented.

6. Section 13ZA remains a helpful tool. If an individual is being considered for support via section 13ZA, supported decision making practice should be used, and independent advocacy for the individual should be considered. Anyone subject to section 13ZA should have a review of their care management.

   However, HSCPs should be aware that section 13ZA cannot be used as an authority for implementing a care plan where the adult does not agree with the proposed action or where it is thought that the individual is unlikely to remain in or agree to the care arrangements. It should also not be used where any other care parties involved voice an objection.

7. Key team members in HSCPs should develop working relationships with the local Sheriff court staff, so there can be easy communication about court delays. HSCP areas can also contact the Scottish Government for further guidance if local avenues have been exhausted.

8. HSCPs should set timescales for intervening to check that families are engaged in the private guardianship process. This should also include checking on the progress of the family with engagement of a solicitor and any legal aid applications. Monitoring the process in this way means if the private application is not progressing timeously remedial steps can be taken.

9. Wherever possible HSCPs should consider the application for an interim guardianship order where a placement is identified. An interim guardianship can be granted without a hearing, and this can save a few weeks in the process.

10. HSCPs should ensure the promotion of powers of attorney at appropriate stages in working with adults in health and social care.

7. Conclusion and next steps

Over the coming months, we will be monitoring the numbers of delayed discharges linked to AWI and will contact those areas where numbers are increasing, to offer support in meeting targets set by Scottish Ministers.

In addition should any HSCP wish to learn more about practice that has improved performance in another area, we can arrange this. Contact us by email at awireform.queries@gov.scot.

Finally, as part of the work responding to the Independent review of Mental Health and Incapacity Law in Scotland, we are actively working on proposals for reform of AWI legislation and views from all HSCPs will be sought on possible reform in due course.

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