

Things you might need to know



This factsheet introduces subjects which will be of interest to carers in certain situations. The information must be treated as a starting point, not as a comprehensive guide, and further advice is available from VOCAL's Information and Advice team.

Adults with Incapacity Act 2002

No-one can legally make decisions for a person once they reach the age of 16, regardless of their relationship to that person. This is something carers can find difficult, especially when they have spent many years caring for that person and know their needs and wants. The Adults with Incapacity Act provides a legal framework for family members and friends to assist the person they care for with decision making. This may be important if you are caring for someone with a learning disability, mental health difficulty, dementia or other condition which can result in someone's mental function being altered.

The act divides decision making into two categories namely finance and welfare. It is possible to have decision making powers in both categories simultaneously or just one.

The Act allows for someone to apply for one of several interventions which assist people to different degrees:

Powers of Attorney

A Power of Attorney must be granted by someone. For example, John must choose to give Janet the power to make decisions for him if he becomes unable to make his own decisions. This means that at the point of arranging the Power of Attorney, John must understand what he is doing and be able to make a decision about it. Solicitors will help prepare the Power of Attorney document and arrange for registration with the Office of the Public Guardian (see ***A-Z of useful contacts*** for contact details)

Intromission with funds

This is a way of accessing money that is in the name of the person with incapacity (eg. a bank account that is in the sole name of the person with incapacity who is no longer able to operate it). This requires completion of a form which must be registered with the Office of the Public Guardian.

Intervention orders

An intervention order allows another person to make a single, one-off decision for

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someone if they are unable to do so themselves (eg. this could be to consent to a medical procedure or to sell a property). This has to be applied for in the Sheriff Court.

Guardianship

A Guardianship Order can be sought when someone is unable to make any decisions due to a mental disorder. The guardianship 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. This has to be applied for in the Sheriff Court.

The Mental Health (Care and Treatment) Act 2003

The Mental Health (Care and Treatment) Act 2003 is the legislation that supports and safeguards people with a mental health disorder. The Act covers detention in hospital and some treatment in the community.

The Act allows for three types of detention/treatment:

Emergency detention order

This means that someone can be detained in hospital for up to 72 hours. It must be recommended by a registered medical practitioner and the person has no right to appeal.

Short term detention order

A short term detention order allows for someone to be detained in hospital for up to 28 days and medical treatment can be given during that time. This must be recommended by a specially trained doctor and requires the consent of the Mental Health Officer. The person detained can appeal to the tribunal or the Mental Welfare Commission. (See the ***A-Z of useful contacts*** factsheet for more details)

Compulsory treatment order

A compulsory treatment order can be based in hospital or the community. This would initially be for 6 months but can be extended. It must be approved by a tribunal, via an application by a Mental Health Officer (specially trained Social Worker) with two medical recommendations. The order will include a care plan for the person and involves the giving of treatment.

Care plan

A care plan should include information on the needs of the service user, the actions proposed to meet those needs, the objectives of those actions and who is responsible for carrying out the actions. The care plan is prepared by the Mental Health Officer.

Advanced statements

This is a statement made when a person is well, about how they wish to be treated if they become unwell. It could be regarding diet, medication or what happens to pets etc. The tribunal and others giving treatment have to take this into account when making decisions.

Long term care

People with health problems and their carers sometimes decide that a care home is the most appropriate place for care to continue. There are a large number of care homes and each one is slightly different. Deciding to move and selecting a care home is a big decision and there are lots of people who are able to assist. Care homes are registered with and inspected by the Care Commission which is responsible for ensuring that they meet national care standards.

The first step to moving to a care home is a community care assessment (see the **Community care** factsheet). If the assessment recommends a move to a care home then you can begin to look for one suitable to the persons needs. Once you have selected a care home there will be a financial assessment to assess how much the person will pay towards their care.

The financial assessment takes into account the capital and income of the person moving into the care home. Capital includes property, investments and savings in that person's name. Only half of any capital that is in joint names will be taken into account as it is the person who requires the care that has to pay for it.

The value of property is not treated as capital if the person's spouse or partner, a relative over 60 or a relative under 60 with incapacity continues to live in the property. In other circumstances the value of the property will be included in the financial assessment.

If the cared for person has over £22,500 in capital they will be asked to pay the full cost of their care. If they have below £13,750 this will be ignored and they will not be asked to contribute to their care costs. If they have between £22,500 and £13,750 for every £250 over £13,750 they will be assessed as having an income of £1.

A person's income is taken into account when they are receiving financial support from the local authority. Some types of income are disregarded and others partially disregarded for the assessment. State pensions, personal pensions, pension credit or income support are assumed capital from income. A person is expected to contribute the total of all their included income (minus a personal allowance of £21.90).

Free Personal and Nursing Care

If assessed as requiring personal care and/or nursing care, people over 65 entering care homes are entitled to £153 personal care allowance and £69 nursing care allowance. People under 65 are entitled to a £69 nursing care allowance if assessed as requiring nursing care. These sums are deducted from the care home fees.

VOCAL has produced a booklet entitled 'Thinking about Long Term Care', which deals with the practical and emotional aspects of long term care. You can order your free copies using the **Publications order form** at the back of this information pack or by contacting VOCAL on 0131 622 6666.