Dementia
Money and Legal Matters: a Guide

Managing Money
Planning Ahead
Power of Attorney
Access to Funds
Medical Treatment & Research
Guardianship & Intervention Orders

Alzheimer Scotland
Action on Dementia

Volume 1  January 2010
To the best of our knowledge and belief, the information in this guide is correct. However, it is not a definitive statement of the law. If you are in doubt, check with a solicitor.

Alzheimer Scotland and its employees or agents accept no liability whatsoever, whether in contract, delict or otherwise as a result of any use, reliance or otherwise by any person or organisation on the information contained in this booklet or electronic versions of it.

The rates quoted in this guide for welfare benefits and capital limits for financial assessment for care home fees normally change in April of each year; other rates and fees quoted may also change. Readers should check with the relevant agency which rates or fees currently apply.
Managing Money
Planning Ahead
Power of Attorney
Access to Funds
Medical Treatment & Research
Guardianship & Intervention Orders
Contents

Chapter 1
Introduction ................................................................. 3
The law and dementia in Scotland ....................................... 4
Adults with Incapacity (Scotland) Act 2000 ......................... 4
Mental Health (Care & Treatment) (Scotland) Act 2003 .......... 6
Adult Support & Protection (Scotland) Act 2007 .................. 6
Your rights as a person with a diagnosis of dementia .......... 7

Chapter 2
About dementia ..................................................................... 8
Early stage dementia .......................................................... 8
Moderate dementia ............................................................ 8
Severe dementia ............................................................... 9
Younger people with dementia .......................................... 9
A proper diagnosis ........................................................... 9
Treatment and research .................................................... 9

Chapter 3
How people with dementia can plan for the future ............... 10
Key points ....................................................................... 10
Introduction ................................................................. 11
Plan ahead ....................................................................... 11
Powers of attorney .......................................................... 11
Continuing power of attorney ........................................... 14
Welfare power of attorney ................................................. 15
Creating a power of attorney ............................................. 16
Safeguards ..................................................................... 18
Making a will .................................................................... 19
Donating your brain for medical research ......................... 20
Advance statements, advance directives and living wills .... 20
Trusts ............................................................................. 21
Your house ....................................................................... 22
Transferring ownership of your home ................................ 22
Funeral arrangements ....................................................... 23
Other arrangements ........................................................ 23
Collecting pensions and benefits ....................................... 24
Payment by cheque ........................................................ 24
Account with PIN (Personal Identification Number) ...... 25
Third party mandate ........................................................ 25
Payment into a joint account ............................................ 25
When managing money becomes too difficult ................. 26

Chapter 4
Simple ways for a carer to help with financial matters ........ 27
Key points ....................................................................... 27
Introduction ................................................................. 27
Helping someone with no continuing power of attorney .... 28
Payment of pensions and benefits .................................... 28
Joint accounts .................................................................. 29
Access to Funds scheme .................................................. 29
Access to Funds by organisations ..................................... 33
Transferring from guardianship to the Access to Funds scheme .................................................. 33
Outlays and expenses ...................................................... 33
Certificates of authority .................................................. 34
Accessing funds or financial guardianship? ....................... 34
Using a continuing power of attorney .............................. 34
Registering a continuing power of attorney (made after April 2001) .................................................. 35
A position of trust ........................................................... 35
Records ........................................................................ 36
Powers of attorney made before April 2001 ..................... 36
Information and consultation .......................................... 36
When a power of attorney ends ....................................... 37
Safeguards .................................................................... 37

Chapter 5
Simple ways for a carer to help with welfare matters .......... 38
Key points ...................................................................... 38
Introduction ................................................................. 38
Welfare powers of attorney .............................................. 39
Using a welfare power of attorney .................................... 39
A position of trust ........................................................... 40
Records ........................................................................ 40
Information and consultation .......................................... 40
When a power of attorney ends ....................................... 40
Safeguards .................................................................... 40
Medical treatment .......................................................... 41
Assessment of capacity .................................................. 41
Certificate of incapacity .................................................. 42
What treatment is authorised ........................................... 42
Medical treatment, consent and the rights of carers and proxies .................................................. 43
Emergency treatment ..................................................... 43
Withdrawal and withholding of treatment ....................... 43
Mental Health (Care and Treatment) (Scotland) Act 2003 .................................................. 44
Safeguards .................................................................... 45
Advocacy ....................................................................... 46
Legal representation ......................................................... 46
Advance statements ......................................................... 46
Unlawful detention ........................................................ 46
Entry, removal and detention powers .............................. 47
Taking part in research .................................................... 47
Examinations, organ donation and research after death ... 47

Chapter 6
What to do if you need more powers ................................ 48
Key points ...................................................................... 48
Intervention order or guardianship? ................................. 48
Intervention orders - for one-off decisions or actions ....... 49
Guardianship - for continuing help ................................. 49
Applying for an intervention order or guardianship ......... 50
Being a guardian ........................................................... 54
If something goes wrong ............................................... 55
Local authority and individual responsibilities ............... 55
Chapter 1

Introduction

Who this guide is for
This two volume guide is for people with dementia and for people helping or caring for someone with dementia.

Dementia affects the memory and the ability to work things out. Coping with money is often an early difficulty. Later on, as the illness progresses, money and legal matters can become harder to manage. If you have a diagnosis of dementia, this guide will help you sort out day-to-day money matters and help you plan ahead for the time when you are less able to manage your own affairs. It also tells you about the types of financial and other help available and how your income, savings and property might be affected if you are receiving care in your own home, in a care home or in a hospital.

How this guide is set out
The rest of this chapter describes the three main laws in Scotland affecting the rights of people with dementia. Although there are no laws specifically for people with dementia, these three are the ones you are most likely to come across.

Chapter 2 of this volume gives a short overview of dementia and the stages people are likely to go through, although each person’s journey through dementia will be different.

Chapter 3 is particularly aimed at people in the early stages of dementia, although other readers should also find it useful. If you have been diagnosed with some form of dementia it will help you think about arrangements for the future, while you are able to make decisions (see How people with dementia can plan for the future, page 11).

Chapters 4 to 6 are aimed more at a carer helping someone with dementia who is no longer able to manage her financial and legal affairs or make decisions for herself. Throughout this guide the term “carer” refers to a partner, spouse, family member or friend who is supporting someone with dementia.

[Volume 2 of this guide covers information about welfare benefits, community care services and long stay care. It also gives details of organisations which can provide further help and a list of useful further reading.]

Note: We have decided to call the person with dementia ‘she’ in this guide rather than using the awkward he/she. However, the information applies just as much to men who have dementia.

We have done everything we can to make sure that the information in this booklet is correct. However, it is not a definitive statement of the law. If you are in doubt, check with a solicitor.

For further information about any aspect of dementia and caring for someone with dementia, call the 24 hour Dementia Helpline on freephone 0808 808 3000.

The guide is for readers in Scotland. There are big differences between legal provisions in Scotland and the rest of the UK. Readers outside Scotland should check with a solicitor or advice bureau or with one of the organisations listed in Further help, page 56 of Volume 2.
Introduction

The law and dementia in Scotland
There are several laws which aim to enable decision making and protect the rights of vulnerable adults, including people with dementia. These are the Adults with Incapacity (Scotland) Act 2000; the Mental Health (Care & Treatment) (Scotland) Act 2003; and the Adult Support & Protection (Scotland) Act 2007. There is a short description of the main points of each of these laws below.

Adults with Incapacity (Scotland) Act 2000
This Act is the main law supporting people with dementia and their carers. It is referred to throughout this guide.

This Act brought in:
- new ways for people to make their own choices about who will handle their affairs if they can’t do it themselves
- new safeguards to protect the interests of people with dementia who become unable to act or make important decisions for themselves
- new measures to give a carer authority to make decisions about and manage a person’s money, property, welfare and health care.

The use of the Act is regulated by the Sheriff Courts, the Office of the Public Guardian, the Mental Welfare Commission and local authorities (local councils). See Further help section in Volume 2 for information about the role of each of these bodies, page 56).

Principles of the Adults with Incapacity Act
The Act does not see incapacity as ‘all-or-nothing’. It recognises that a person might be unable to take some kinds of decision, but still be able to decide on other things. For example, someone who has a problem handling money may still be able to decide what she wants to buy.

What “incapacity” means under the Act
For the purposes of the Act, ‘incapable’ means incapable of:
- acting on decisions; or
- making decisions; or
- communicating decisions; or
- understanding decisions; or
- retaining the memory of decisions
in relation to any particular matter due to mental disorder or inability to communicate because of physical disability.

This means that no one should be treated as unable to make or act on a decision unless all practical steps have been taken to assist her.
Introduction

The Act is based on several fundamental principles. These principles are a set of rules which must be followed by anyone making a decision on behalf of someone with dementia.

The principles are:

- **Benefit:** any action taken under the Act must only be done if it benefits the adult with incapacity (in this case, the person with dementia), and this benefit cannot be achieved any other way.

- **Minimum intervention:** someone can only take an action under the Act if there isn’t a simpler way to get the same result which would be less likely to take responsibility away from the adult.

- **Present and past wishes:** anyone taking action on behalf of the adult must take account of the adult’s wishes by asking her, if possible. They must also consider past wishes; for example, by asking those (such as family, friends and professionals) who knew the adult before she was ill. A person may have set down some of her wishes in the form of an ‘advance statement’ or ‘living will’ (see Advance statements, advance directives and living wills, page 20).

- **Consultation:** the adult, the adult’s nearest relative and her main carer must also be consulted about any action, as far as is reasonable and practical. So must anyone appointed by the person with dementia to look after her affairs (by granting a **power of attorney**) or appointed by the court (**guardians** or **interveners**), and anyone else with an interest in the person, which might include a friend or professional.

  The “nearest relative” is generally, in order of precedence, the spouse (husband or wife), civil partner or cohabiting partner (including same-sex partners) where the relationship has been for a period of not less than six months, oldest child, parent, brother or sister, grandparent, grandchild, uncle or aunt.

- **Exercising and developing skills:** the person whose affairs are being looked after must be encouraged and helped to do as much as she is capable of in relation to her property, financial affairs and personal welfare.

The Act provides various ways to safeguard a person’s welfare and manage her financial affairs. These include **Power of Attorney**, **an Access to Funds scheme**, **Guardianship and Intervention orders**. It also allows for arrangements to be made to manage a limited amount of funds for residents in care homes or long-stay hospitals. The Act covers decisions about medical treatment and consent to take part in research. More will be said about each of these later in this guide.
Introduction

Mental Health (Care & Treatment) (Scotland) Act 2003
This Act covers situations when someone can be taken to a psychiatric hospital or clinic or treated for mental illness against her will, what rights she has and what safeguards are in place to protect these rights.

It is unusual for someone with dementia to be treated under this Act but it may be of benefit and necessary in certain circumstances. Treatment under the Mental Health Act should not be regarded as stigmatising. It gives added protection where the person is unable to give informed consent and is resisting other forms of intervention to the extent that she may harm herself or others.

A short Introduction to the Act and the Code of Practice that goes with it are available from the Scottish Government. (See Further reading section in Volume 2, page 60). There is more information about this Act in Chapter 5 of this volume, page 44.

Adult Support & Protection (Scotland) Act 2007
This Act gives further protection to people with dementia who may be vulnerable to harm through severe self neglect or harm by others. Harm might be physical, psychological, sexual, financial or deliberate neglect. A person with dementia can be susceptible to undue pressure from others to do things she would not otherwise have agreed to.

The intention of the Act is to help identify and support adults known (or suspected) to be at risk and to achieve a balance between reducing the risk of harm to them and enabling them to assert their rights as individuals to live their lives as they choose. The Act recognises that harm can be unintentional, and a local authority making enquiries under the Act may be able to identify a need for practical and/or emotional support to be provided to the person and/or her carer.

A local authority can only use the Act if it is satisfied that the person:

- is unable to protect herself, her property, rights or other interest because of a disability, mental disorder or physical or mental infirmity, and
- is more at risk than someone who is not affected by disability, mental disorder or physical or mental infirmity, and
- is at risk of harm.

This is known as a three point test in that all three parts of the test need to be met before the Act applies. In some circumstances it could apply to someone who has dementia.

Under this Act local authorities have a legal responsibility to make inquiries or investigate situations where an adult is known or thought to be at risk of harm to establish whether or not further action is needed to stop or prevent harm occurring.
Introduction

The Adult Support & Protection Act has a number of guiding principles similar to those in the Adults with Incapacity (Scotland) Act 2000 – considering benefit to the adult, minimum intervention, the adult’s past and present wishes, consulting with the adult, her primary carer and nearest relative.

**Other guiding principles include:**

- the importance of the adult taking an active part in the performance of any function under the Act;
- providing the adult with the relevant information and support to enable her to participate as fully as possible;
- the importance of ensuring that the adult is not treated less favourably than another adult in a comparable situation; and
- the adult’s abilities, background and characteristics (including their age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage).

These principles only apply to the local authority or any other public body acting under the Act – they do not apply to the adult or anybody acting on behalf of the adult (such as an advocate, attorney or legal representative).

A Short Introduction to Part 1 of the Act setting out its main features and provisions may be found at: 
www.scotland.gov.uk/Topics/Health/care/adult-care-and-support/legislation/Resources

Anyone concerned that a person with dementia is being harmed or is at risk of harm can report their concerns to the local authority.

**Your rights as a person with a diagnosis of dementia**

No one can have authority to make decisions on your behalf that you can make for yourself. The law states that everyone is presumed to have capacity unless there is evidence that they can no longer look after their own interests.

Having a diagnosis of dementia does not mean you are unable to make some or all major decisions for yourself. This is why the law says that if someone wishes to apply to manage any of your affairs on your behalf, it is necessary for a doctor to assess your capacity in relation to the specific decisions to be made. More will be said about this in later chapters.

Anyone acting on your behalf must follow the principles of the Adults with Incapacity Act. (see above, page 4).

Your rights are very well explained in the DVD Making Decisions – Your Rights: People with Dementia. This is free from the Scottish Government – see *Further reading* section, Volume 2, page 60 for where to get a copy.
Chapter 2

About dementia

Dementia is the progressive loss of the powers of the brain. The most common cause is Alzheimer’s disease. Other causes of dementia include vascular dementias (including multi-infarct dementia), Lewy body dementia, alcohol-related dementia, fronto-temporal dementia (including Pick’s disease) and HIV. All of them damage and destroy brain cells, so that the brain cannot work as well as it should.

Usually, the person’s memory starts to fail and there is a slow loss of ability to do simple everyday tasks. Dementia can affect every area of human thinking, feeling and behaviour. Each person with dementia is different - how the illness affects someone depends on which areas of her brain are most damaged.

The illness generally starts slowly with a gradual deterioration. It may have been progressing for a year or more before anyone notices something is wrong, and it can go on for 10, 15 or more years. The progress varies a lot from one person to another, so there are no firm answers about what to expect. Problems can also vary from day to day. Some changes are more common in the early stages and others tend to happen later.

In Scotland, about 71,000 people have dementia.

Early stage dementia
At first, the changes are slight. The person becomes forgetful and likely to repeat things. She may behave in unusual ways. She may be inwardly worried that she is losing control. Some people may become withdrawn and depressed, or agitated. Some may lose interest in life and find it hard to make day-to-day plans, and some may have problems handling money. These early changes may be noticed only by close family and friends. A free booklet, Facing dementia: how to live well with your diagnosis gives practical advice for people with early stage dementia on coping with the effects of the illness and sorting out practical matters. (See Further reading, Volume 2, page 60.)

Moderate dementia
As the illness goes on, the changes are greater. Memory problems get worse. The person may begin to:

- forget names of family or friends
- repeat questions over and over again
- not eat properly
- neglect personal care
- find it hard to grasp what is said
- be hard to understand at times, losing track of what she is saying
- become angry or upset quickly
- see or hear things that are not there
- have difficulty managing housework, food preparation, activities, interests or work
- need help with everyday tasks such as bathing and dressing
- need help with handling money.
**About dementia**

**Severe dementia**
In the later stages of dementia she may be very confused. Often she may not recognise even close family members. She will need a great deal of help, for example with eating, washing, bathing and using the toilet. Her speech may make little sense and she may not understand other people. Her personality may have changed greatly, but she may remain physically well for a long time.

A free book, *Coping with dementia - a practical handbook for carers*, provides information on caring and on finding services to help. (See Further reading, Volume 2, page 60 for details).

**Younger people with dementia**
Dementia is most common in older people but can affect people in their 40s or 50s or even younger. The loss of income from employment is often a major concern to younger people with dementia and their families. This booklet includes information for this group as well as for those over pension age.

**A proper diagnosis**
Confusion or forgetfulness do not always mean someone has dementia. Many other conditions, such as infections, depression or the side effects of medicines can cause similar problems. Dementia can only be diagnosed by ruling out other possible causes of the symptoms. It is very important to have a proper medical diagnosis, as many of these conditions can be successfully treated. Anyone worried about her memory or other symptoms such as confusion should go to her General Practitioner (family doctor) in the first instance. The GP may refer her to a specialist consultant.

Sometimes dementia can be made temporarily worse by other medical problems. If the person with dementia seems suddenly more confused, she should see a doctor, usually her GP. The GP can also help the person to access other forms of help and support.

**Treatment and research**
Although there is no cure for dementia at present, much research into causes and treatments is going on. There is also research into other aspects of the experience of the illness, which people with dementia may be asked to take part in. There are drugs which may help some people with the symptoms of the most common form of dementia, Alzheimer’s disease, and also Lewy body dementia. More treatments are likely to become available over the next few years.
People with dementia often say that the ability to manage money is one of the first skills to go.

Making plans for your financial and personal welfare as soon as possible after your diagnosis is very important. Later on in your illness you may no longer be able to make certain arrangements.

You can use powers of attorney to appoint someone you trust to look after your financial affairs (continuing power of attorney) and/or your personal welfare (welfare power of attorney).

If you want, you can have different attorneys to look after your financial affairs and your personal welfare; you can also have one or more substitute attorneys to take over if your original attorney is unable to continue.

Many people prefer to use a solicitor to draw up a power of attorney but you can ‘do it yourself’.

Having a power of attorney in place doesn’t mean you can no longer make any decisions for yourself.

Your attorney should always take your wishes into account when making decisions on your behalf.

You can also set out your wishes about your future care and medical treatment in an advance statement or an advance directive (or living will).

If you haven’t made a will or it has been some time since you reviewed an existing will, it is a good idea to do it while you are able – no-one else can do that for you.

Many people worry about being forced to sell their house if they have to go into a care home. The local authority will not count the value of your house if your spouse or partner still lives there or if a relative aged over 60 or a dependent child under 16 lives there.

You should take advice if you are thinking of giving away your house or other property.

It is a good idea to open a bank or building society account to avoid keeping large amounts of cash in the house.

You can simplify your financial arrangements by paying bills by direct debit or standing order and getting benefits and pensions paid into a bank or Post Office account.

If you do not have a continuing power of attorney, you can still get help from someone you trust to manage your money. For example, someone can become an appointee to collect and manage your state benefits; this means that someone can collect your benefits or cash cheques on your behalf.
How people with dementia can plan for the future

Introduction
This chapter is for people in the early stages of dementia and their family and friends. It looks at how people with dementia can make their own decisions about who will look after their finances and welfare in the future, if they can no longer manage. It also looks at how to make handling money matters simpler.

Plan ahead
Making plans as early as possible is very important. If you have dementia, you have the same right as anyone else to make your own choices. Making some decisions now can also help avoid trouble and expense for your family and friends later.

Dementia is progressive, so later on in the illness you may no longer be able to make these arrangements. Put your financial and legal affairs in order as soon as possible. It is a good idea to see a solicitor, who can help with powers of attorney, wills or drawing up a trust. See Further help, Volume 2, page 56, for how to find a solicitor if you don’t already have one.

Powers of attorney
A power of attorney is a document in which you appoint someone you trust to look after your affairs. The person you give the power to manage your affairs is called your attorney.

Powers of attorney are the best way for you to have maximum say in what happens if one day you can’t make decisions yourself. Until that time, you are in control. Keep the document safe, and make sure your attorney (and anyone else you think should be told) knows where it is.

The Adults with Incapacity Act makes it possible to have two powers of attorney. You can have one for your financial matters (a continuing power of attorney) and one for your personal welfare (a welfare power of attorney). You can choose the same person to do both, but you don’t have to.

Make sure your proposed attorney is willing
You should talk to whoever you want to be your attorney, to make sure he or she is willing. You don’t legally have to do this, but the power of attorney must be registered with the Public Guardian before it can be used. The Public Guardian won’t register a power unless satisfied that the attorney or attorneys you name are prepared to carry out the duties as attorney. If a proposed attorney refuses, it might be too late to choose someone else. It is wise to register your power of attorney as soon as possible after the document is signed to make sure that it is complete and correct.
How people with dementia can plan for the future

It is a good idea for everyone – whether or not they have dementia – to set up powers of attorney, in case of illness or accident.

You can grant a power of attorney only if you are capable of understanding what you are doing. This means if you have early dementia it is very important to consider giving someone power of attorney as soon as possible. No-one, not even your close relatives, can arrange a power of attorney for you, so it must be done while you are able to express your own wishes. Later on, it may be too late.

If you or your potential attorney would like more information on the role of the attorney, the Scottish Government has published a code of practice (see Further reading, Volume 2, page 60).

It is possible for you to draw up a power of attorney document yourself although you may find it easier or more reassuring to use a solicitor. You can find sample power of attorney documents on the Alzheimer Scotland website at www.alzscot.org and on the website of the Office of the Public Guardian at www.publicguardian-scotland.gov.uk/. The Code of Practice for Continuing and Welfare Attorneys also provides a list of possible powers to include in the document.

If you do draw up the document yourself, it must include a certificate signed by a solicitor or other “prescribed” person such as a doctor stating:

- that he or she has interviewed you, the granter, immediately prior to the signing of the document;
- that he or she is satisfied, because of his or her own knowledge of you or having consulted other named persons who know you, that you fully understand the nature of the powers being given and the extent of them; and
- that he or she has no reason to believe that you are acting under any influence or any other reason which should prevent the powers from being given.

**Who to choose as your attorney**

Think about who you would like to be your continuing and/or your welfare attorney. Any attorney should be someone you trust; for example:

- your partner or spouse
- a family member
- a close friend.

A firm of solicitors could be your continuing (financial) attorney, although your welfare attorney has to be an individual.
One attorney or more than one?

You can make separate or joint welfare and financial power of attorney. One advantage of making a joint power of attorney is that you only need to register once and have one registration fee to pay to the Office of the Public Guardian (currently £70).

There are several options when it comes to appointing an attorney. You can appoint:
- one person (or more than one) to be your welfare attorney and another person (or more than one) to be your financial attorney; or
- one person (or more than one) to be your welfare and financial attorney.

If you do appoint different people to be your welfare and financial attorneys, you need to be sure that they will co-operate closely with one another, as welfare decisions usually have financial implications and vice versa.

It is a good idea to appoint joint attorneys to work together, or one or more substitute attorneys, to take over if an original attorney resigns or dies.

If you appoint joint attorneys, they will have to act together and both be involved in any decision making on your behalf. If you want them to be able to act together or separately, you need to include a statement in your power of attorney saying that you are appointing them “to act jointly and severally or severally”. This allows each attorney to act as an individual or jointly with each other.

A couple should each grant separate powers of attorney, although they can choose the same attorney(s). They may wish to appoint each other, perhaps with another family member or a solicitor jointly, or as a substitute. It is a good idea to appoint someone younger than yourself, since a younger attorney is likely to outlive you.

The Adults with Incapacity Act says your attorney must always take your wishes into account when making decisions on your behalf, so it is important to make sure your attorney knows as much as possible about you and your preferences. Sometimes, if circumstances change, it may no longer be of benefit to you for your attorney to follow the precise instructions you set out in your power of attorney document. In these situations, it can be very helpful for your attorney(s) to work through the rules of the Act when making a decision which seems to go against your original wishes.

For example, when you granted your power of attorney, you may have expressed your wish not to be moved to a care home under any condition. However, circumstances might change so that your health, and perhaps the health of your main carer, means that staying at home may no longer be possible and you might benefit more from being in a care home, receiving 24 hour care.

The code of practice for attorneys gives a lot of practical information about the type of things which you should consider.
Continuing power of attorney
A continuing power of attorney only covers your property and financial affairs, and gives no power to take other personal decisions (see Welfare power of attorney, page 15).

The document must specify exactly what powers your attorney is to have, so check with your solicitor that all the necessary powers are included. You might list the powers you want to give, or you might give your attorney a general right to deal with all your financial affairs. But if you want your attorney to be able to deal with property, such as your house, the power of attorney must say so specifically.

Powers could include:
- paying bills
- collecting pensions and other money due to you
- dealing with bank or building society accounts
- having access to important financial information
- buying and selling investments and other property, including houses
- signing documents and entering contracts
- managing direct payments and other public funds provided for community care services
- bringing, defending or consenting to legal actions, for example, in the case of an accident
- making gifts of specified amounts to named people
- expenses for the attorney.

The Office of the Public Guardian provides sample financial powers on its website at www.publicguardian-scotland.gov.uk. These can give a useful starting point if you are preparing your own document or for instructing your solicitor, but you should also think about what decisions you want your attorney to be able to make on your behalf.

Note:
A continuing attorney cannot make a will for you, take decisions on your personal welfare, such as care or medical decisions, make gifts to him or herself or to anyone else (unless you specifically authorise this), appoint a successor or do anything the power of attorney document does not list.
You can choose to have a continuing power of attorney operate straight away, while you are well, for convenience. This does not prevent you continuing to run your affairs while you are able to. Alternatively, you can specify that it can only be used after a particular event, for example if a doctor certifies that you have become mentally incapable of running your own affairs. This is known as a ‘springing clause’ and can be used in two ways:

- you can state that the power should not be registered with the Public Guardian or used until the specific event has occurred, for example your lack of capacity has been assessed by your doctor; or
- you can have the document registered immediately but specify an event which must occur before it can be used by the attorney, e.g. your lack of capacity is confirmed in writing by a doctor. In this case, your document must contain a statement that you have considered how you would wish your incapacity to be determined.

The first option offers additional protection as the attorney does not hold the certificate until proof of incapacity is provided. However, because the power cannot be registered before the ‘springing’ event occurs, it will not have been checked by the Public Guardian. If it turns out to be incorrect, the attorney will have no power to act at all. If you have been assessed by that time as lacking capacity you won’t be able to authorise any corrections to the power of attorney.

**Welfare power of attorney**

For a welfare power of attorney, you also choose what powers you want your attorney to have. For example, some or all of:

- deciding on your care arrangements
- managing your care, including care funded through direct payments and other public funds
- making decisions on your clothes, personal appearance, diet, leisure activities or holidays
- deciding where you should live
- having access to confidential or personal information about your welfare such as health records
- consenting to medical treatment (if you want this power, it must be specifically stated in the document)
- consenting to you taking part in research
- bringing, defending or consenting to legal actions to do with your welfare.
How people with dementia can plan for the future

Under the Act’s principles (see page 5) your welfare attorney must always take your wishes into account when making these decisions, so it is important to make sure he or she knows as much as possible about your likes and dislikes. For example, talk to him or her about your personal welfare concerns, such as medical conditions, how you would hope to be cared for in the future, religious or spiritual matters, any particular difficulties in family relationships and your preferences for diet, appearance and holidays. Ask him or her to keep a note of your wishes. However, your attorney doesn’t necessarily have to follow your wishes, for example if circumstances change.

Welfare attorneys can only take on their powers if you become incapable of taking these decisions yourself. All welfare powers of attorney granted on or after 5 October 2007 have to contain a statement that the granter has considered how they would wish their incapacity to be determined. You don’t have to say how you want your incapacity to be determined, only that you have considered it.

It is important to think about who you want to make the decision that you are no longer able to manage your own affairs. You might want a doctor or solicitor to determine that you are no longer capable, or you might decide that your proposed welfare attorney can determine this if he or she reasonably believes that you are incapable in relation to decisions about your personal welfare.

Creating a power of attorney

1. Discuss your plans with your friends and relatives and any professionals you are involved with.
2. Talk to the person or people you want to appoint as your attorney and make sure they are willing.
3. See a solicitor if you would rather not ‘do it yourself’. Ask how much it will cost before you start – all solicitors must provide this information if they are asked.
4. Discuss with the solicitor what powers you want to include. If you are naming the same person as your continuing and welfare attorney, the cheapest way is to do both at once in the same document. Or you could name different continuing and welfare attorneys in separate documents, but at the same time.

A fairly standard power of attorney may cost £150 - £250, or sometimes more, depending on the time spent by the solicitor and the cost of any doctor’s certificate, if the solicitor feels the need for further evidence of your mental capacity. Ask for an estimate of the cost before you start. People on Income Support, Pension Credit or on a low income may be able to get help to cover the cost through the Legal Advice and Assistance scheme.
How people with dementia can plan for the future

The solicitor will draw up the power of attorney document for you to sign. As a safeguard, it has to include a certificate signed by the solicitor or a doctor certifying that he or she spoke to you just before you signed and that you understood what you were doing and were not under anyone else’s influence. If you are appointing the solicitor as your financial attorney, the certificate has to be signed by a different solicitor (or a doctor). This is to help prevent anyone taking advantage of someone who is vulnerable. If it is both a continuing and a welfare power of attorney, it must include two of these certificates, one for each part.

A continuing power of attorney must say in the document that it is meant to be continuing – that is, that it will still work if you become unable to manage your own affairs.

Your attorney will need to register the power with the Public Guardian (see Further help, Volume 2, page 56). This can be done right away unless the power states that it can only be registered at a certain time or after a certain event (for example, if doctors certify your mental incapacity). There is a form for registration, and the fee is currently £70. If both the welfare and financial powers are covered in one document there will be only one registration fee to pay.

To use the power of attorney (for example at your bank), your attorney will need to show a copy of the document provided by the Public Guardian together with a certificate of registration. If it isn’t registered with the Public Guardian right away, you should make sure your attorney knows where the document is, so that he or she can find it when it is needed, and get it registered.

For more information, see Using a continuing power of attorney on page 34 and Using a welfare power of attorney on page 39.

If you had already made a power of attorney before April 2001

Powers of attorney written after January 1991 will still work if you are mentally incapacitated unless they specifically say not. They do not have to be registered with the Public Guardian. Generally, existing powers of attorney cover only financial matters.

Your attorney should still manage your affairs according to the principles of the Adults with Incapacity Act, but there are fewer safeguards. However, if your attorney acts improperly, a court could protect your interests by ordering your attorney to be supervised by the Public Guardian or ordering that a guardian is appointed to take over from your attorney.

Consider asking your solicitor to revoke your old power of attorney and draw up a new continuing power of attorney, so that you are fully safeguarded. Think about appointing a welfare attorney as well.
Safeguards
Both the Office of the Public Guardian and the local authority have a duty to protect your interests and safeguard you from harm.

The Public Guardian is responsible for safeguarding your interests to do with property or financial affairs. He or she can investigate any complaints where the property or finances of an adult appear to be at risk, including how a continuing power of attorney is being used.

Your local authority can investigate problems with a welfare power of attorney.

Under the Adult Support and Protection Act, local authorities also have a duty to make enquiries and investigate any circumstances where an adult appears to be at risk of harm. Local authorities have been given new powers to carry out investigations, and other public bodies have a duty to share with them any information about an adult who appears to be at risk. This includes the Office of the Public Guardian, the police, the NHS, and the Mental Welfare Commission.

You can terminate your attorney’s appointment at any time, provided you are not mentally incapacitated. It is wise to have a clause in your power of attorney document which makes this clear to the attorney. Terminating the attorney’s appointment is best done in writing. Your attorney should then notify the Public Guardian. If the attorney is not prepared to do this, or if you have lost contact with him or her, send a copy of your letter to the Public Guardian explaining the circumstances, and he or she will deal with it.

If your attorney is taking decisions for you, but you are worried about what he or she is doing, you can complain to the Public Guardian (for all powers of attorney covering financial matters) or the local authority (for welfare powers of attorney). They will investigate. Anyone else who is worried could also complain. You can phone to discuss the problem, but put your complaint in writing if you want it investigated. The Mental Welfare Commission will look into matters if you are not satisfied that the local authority has investigated sufficiently thoroughly. You can also ask the Mental Welfare Commission for advice via their Helpline. See Further help, Volume 2, page 56, for contact details for the Public Guardian and the Mental Welfare Commission.
Making a will

If you do not already have a will, you should make one while you are able. No-one else can make a will on your behalf. Even if you are not wealthy, a will is useful to leave personal belongings to friends or family members who will appreciate them, and there is often insurance money to come in. Otherwise, your possessions will be divided after your death according to fixed legal rules which may not produce the result you want. The absence of a will can cause extra worry, expense and delay after someone dies. If you already have a will, but it was made some time ago, you might want to review it in case you want to make any changes.

Wills are best prepared by solicitors. The fee (about £60 - £100 for a simple will) is well worth it because of the risks of making a mistake with a home-made will or a will form. Ask the solicitor how much it will cost before you start. People on Income Support, Pension Credit or on a low income may be able to get help to cover the cost through the Legal Advice and Assistance scheme. Some solicitors will visit you at home if you find it difficult to get to their office.

Before you see the solicitor, think about what property you have and how it is going to be divided and make some notes. This helps give clear instructions to the solicitor. Choose an **executor** (a person to manage your estate when you die). You may want to bear in mind that in some cases choosing the same person as your attorney and executor might cause a possible conflict of interest – your attorney should be spending your money for your benefit rather than saving it up for someone else to inherit.

If you want to change your will at any stage, see a solicitor. Your solicitor may want your doctor to certify that you are still mentally capable enough to make or change your will.

You could consider leaving a legacy to a charity in your will, which can reduce Inheritance Tax liability on your estate. Alzheimer Scotland benefits enormously from legacies each year which help maintain and develop our work in Scotland. All gifts to charities are tax exempt.
How people with dementia can plan for the future

Donating your brain for medical research

Much of the research into various forms of dementia relies on post-mortem examination of donated brain tissue. Many people with dementia and their families are keen to help improve understanding of dementia and assist scientists with finding a treatment or cure which will help future generations. Researchers also need healthy brain tissue so they can compare it with diseased tissue.

To be useful, brain tissue needs to be removed very soon after death (within 48 hours), which is obviously a difficult time for families. Anyone interested in donating their body or brain for medical research should discuss their wishes with their family in advance and make sure that any necessary arrangements are in place. If you are making or revising your will, you can ask your solicitor to include this wish in the will. You can also include your wishes about brain donation in your advance statement – see below – and make sure any doctor treating you knows about it.

For contacts for brain donation, see Further help section in Volume 2, page 56.

Advance statements, advance directives and living wills

You may have wishes and preferences about your future care and medical treatment which you may not be able to communicate later on, as your dementia progresses. Discuss these with your welfare attorney, if you have one. You can also write down your wishes in the form of an advance statement, and/or an advance directive or ‘living will’.

An advance statement allows you to state, in advance, the kind of care and treatment you would authorise for yourself, in the event of you being unable to choose or express your wishes. The statement might include your preferences about particular drugs or for being cared for in a particular way.

An advance directive, sometimes called a ‘living will’, is the term usually used to describe instructions for refusing a specific treatment or treatments in certain circumstances. The sorts of treatments commonly covered by advance directives are artificial feeding, mechanical ventilation, antibiotic therapy and resuscitation.

It is a good idea to discuss your advance statement and/or directive with your doctor and give the doctor a copy for your medical file.

You should review and, if necessary, update your advance statement or directive regularly to take into account medical advances and new drug treatments, as well as changes to your own views and preferences.
How people with dementia can plan for the future

Under the Adults with Incapacity Act, doctors must take your past wishes into account when deciding what treatment to give you. If you have strong feelings, an advance directive is one way to make them clear. The British Medical Association has also advised doctors to take account of advance directives when deciding on treatment. This will mean that your wishes should usually be followed, but the doctor is not bound to do this if he or she believes it would be against your best interests, or cause pain or suffering.

The Mental Health (Care and Treatment) (Scotland) Act 2003 gives the right to someone with a mental disorder to make a particular kind of advance statement about the treatment he or she would prefer to receive, or not receive, for that mental disorder. For more information see page 46.

**Trusts**

A trust is created when money or property is handed over to trustees with instructions to them to hold it for the benefit of somebody else. The trustees may be relatives, close friends, a solicitor or other professionals.

Trusts can be useful where someone receives a sum of money but can’t manage that money themselves. A trust can help to ensure that the money is used to benefit the person concerned.

You will need a solicitor to draw up a trust deed. This deed creates the trust, names the trustees and sets out what the money can be spent on and how it is ultimately to be shared out.

Using a trust, you could transfer your money and property to trustees. They can then administer them for your benefit. Other people could also set up a trust for your benefit. For example, your husband or wife could leave their money and property in a will to trustees rather than outright to you.

Your solicitor can advise you on how best to protect your capital. It may be possible for your solicitor to word the trust so that the money doesn’t count as your capital for assessing welfare benefits or contributions to care home fees. However, this would not be the case if you knowingly set up the trust to avoid care charges or to claim benefits. Income from a trust, whether actually paid or not, may be taken into account in a financial assessment. (See *Deprivation of assets* in Volume 2, page 48). The costs of administering a trust can sometimes be high.
How people with dementia can plan for the future

Your house
As the illness progresses, you might eventually need to enter a care home. If you do not have a large income or very substantial savings, you will probably need help from the local authority to pay the fees, and might also be entitled to some State benefits such as Pension Credit. There are some circumstances under which the value of your home will be taken into account when the local authority calculates how much you should pay towards your care home fees (see Volume 2, Long term care, page 35).

If you have to move into a care home, the local authority cannot count the value of your house while your spouse, your civil partner or your opposite-sex partner still lives there. The same is true if a relative who is over 60 or incapacitated, or a child under 16 you are liable to maintain, lives there. The local authority can also choose to ignore the value of your house in other cases; for example when a same-sex partner or a carer under 60 still lives there, but this is at the discretion of the particular local authority.

Transferring ownership of your home
Some people choose to transfer ownership of their homes (usually to a relative) so that the value of the property is not taken into account in a financial assessment. This can be done with the aim of getting extra financial help from the local authority towards the costs of care home fees. However, the local authority may still take the value of the property into account as part of your assets when they do a financial assessment. The Department for Work and Pensions may also take the value into account if you claim Income Support or Pension Credit. There is no time limit on this.

If you transferred ownership of your home less than six months before you move into a care home, the local authority can treat the new owner as a liable person and may require him or her to make a contribution to the costs of your care fees. (See Deprivation of assets in Volume 2, page 48).

This does not apply if the transfer took place more than six months before you moved to the care home. However, the local authority might still treat you as having the value of the house as part of your capital. This is called ‘notional capital’ and can mean that the local authority gives you less, or no, financial help with the fees.

Take advice from a solicitor if you are thinking about transferring your home to someone else, for example to a son or daughter, while you still live there.

Your right to stay in the house could be at risk. For example, the new owner might divorce or go bankrupt, or he or she could die and the rights to the house could pass on to his or her spouse. It is important to make sure that you will be able to live in the house for as long as you need it.
Funeral arrangements
Some people wish to make provision in advance for their funeral. You can cover the cost by savings or with a pre-arranged funeral plan or a funeral bond, available from a number of funeral directors. Another way is to buy an insurance policy to cover the cost, available from insurance companies. You can usually pay for funeral plans and bonds with a lump sum or by instalments.

You can include in your will any preferences for your funeral, such as burial or cremation and any special wishes for the service. It is best if your nearest relatives know this in advance.

Other arrangements
There are other things you can do to help you manage your finances for as long as possible.

Keep your money in a bank or building society
Try not to keep large amounts of cash with you or at home. Keep money in the bank to avoid it going astray. If you don’t already have a bank or building society account you should open one. As long as your account is kept in credit you should not have to pay any charges. Put any money you won’t need for some time in an interest-bearing account. Keep a note of the details of all your accounts, and make sure your attorney, if you have one, knows about them.

Ask organisations to pay directly into your bank or building society account to avoid cheques and other payments being mislaid. For example, your state or private pension could be paid directly into your account. You will need to sign a separate form or request (called a mandate) for each organisation. You can get the forms from the organisation concerned.

Pay bills by direct debit or standing order
You can pay regular bills automatically by direct debit or standing order. Once this is set up you will not have to worry about remembering to pay your bills. You can pay many bills this way, such as rent, mortgage, council tax, gas, electricity, telephone bills, home care services and the TV licence.

A direct debit tells the bank to pay whatever sum is due, so you don’t need to worry if the amount changes. Ask the organisation concerned for a form to fill in.

For a standing order, you sign a form authorising the bank to pay, every month or week, the specified amount to the organisation concerned. Once the standing order has been set up you will need to sign again if the amount changes.

Most gas, electricity and telephone companies have schemes so that the bill can be paid by regular instalments. The organisation estimates the yearly payment and fixes the monthly instalments. These can be paid by standing order or direct debit. Contact the company to do this. Some other bills, such as house insurance, can also be paid this way.

For some large bills such as winter fuel bills you can buy savings stamps. Make sure you keep these together in one safe place, and that your attorney or someone else you trust knows where they are.
Collecting pensions and benefits
State pensions and other benefits are normally paid directly into a bank, building society or post office account.

If you already have a bank or building society account, you can have your pension and other benefits paid directly into that account or you can set up a separate account for those payments.

If you do not have an account you can open a basic bank account at a bank or Post Office. A basic bank account is a simple account which has fewer features and is less flexible than a current account. A basic bank account cannot be overdrawn and does not have a cheque book. You can also open a Post Office card account. Post Office card accounts can only be used to receive benefits, state pensions and tax credit payments. No other payments can be paid into it. To open a Post Office card account the office which pays your benefit or pension will provide you with a Personal Invitation Document (PID) which you should take to the Post Office so they can open an account for you.

If you would have difficulties opening or managing an account, there are a number of options available, some of which provide more security than others.

Payment by cheque
You can be paid benefits by cheque instead. These cheques can be cashed at a post office or paid into an account. If you need to have your benefits or tax credits paid by cheque, you should contact the Department for Work and Pensions – see Further help, Volume 2, page 56. The cheque payment option provides the facility for someone else to cash the cheque on your behalf.

Someone you trust can cash a benefit cheque for you as long as you sign the back of the cheque in the appropriate place. You need to do this each time someone cashes a cheque for you. The person who is actually cashing the cheque will also sign a declaration on the back of the cheque. The Post Office requires the person cashing the cheque for you to produce evidence of both your identity and their own. You remain responsible for notifying the Department for Work and Pensions about all changes in your own circumstances.

You are only likely to be paid by cheque if you cannot open or manage an account. If you are being paid by cheque, and you do not receive it, or it is lost, stolen, or destroyed, you should get in touch with the office which paid it as soon as possible. You should also get in touch with the police to report the loss or theft. The Department for Work and Pensions should replace your cheque as soon as possible unless there are good reasons not to.
How people with dementia can plan for the future

Account with PIN (Personal Identification Number)
If your benefits are paid into a Post Office card account, you can arrange for someone to collect your benefit for you. You can apply for one other person to be given permanent access to your account; this should be someone you trust. Ask the Post Office for a form to appoint someone to access your account. This is your Permanent Agent. The Permanent Agent will be issued with his or her own card and PIN to access your account. Your Permanent Agent is only authorised to collect payments on your behalf. You are still responsible for notifying the Department for Work and Pensions about all changes in your own circumstances. You will continue to have access to your account using your own card and PIN.

Third party mandate
A third party mandate is a formal instruction to a bank by an account owner to provide another person with access to their account. The terms of the mandate state what authority this person has. In some cases, he or she may be issued with a card and PIN, which will allow him or her to withdraw funds at cash machines.

This arrangement would only be suitable for a permanent/long-term arrangement for one named individual (e.g. relative or trusted friend). However, many banks and building societies do not provide card and PIN access to third party mandate holders.

You can only arrange a third party mandate while you have the capacity to understand the consequences of such an arrangement. If at any time the bank or building society felt that you no longer had the capacity to manage your finances, they could revoke the third party mandate and ask the named individual to provide proof that he or she had authority to manage your finances, such as a continuing power of attorney, financial guardianship, or authority to access your funds.

Payment into a joint account
Another option would be to have any benefits paid into a joint account. However, it would be possible for either account holder to withdraw all the money in the account (unless both signatures were required for withdrawals). Therefore you would want to consider a joint account only with a trusted relative or friend. This arrangement could also have implications for the other account holder. See Joint accounts, page 29.
When managing money becomes too difficult
People with dementia often say that their ability to manage money is one of the earliest skills to go. There are several ways in which a family member or friend can get authority to collect and manage your welfare and other funds on a day-to-day basis.

Continuing Power of Attorney
If this has been granted then the attorney can apply to collect your benefits and manage your Post Office, bank or building society accounts and other assets for you. See Using a continuing power of attorney, page 34.

Someone to handle your benefits
A carer, relative or friend can apply to the Department for Work and Pensions to be made your appointee, which allows them to collect and manage your benefits. The DWP will visit both you and the person who has applied to become your appointee to make sure that you need an appointee and that the person who has applied is suitable. Your appointee will then handle your benefits and keep the Department for Work and Pensions informed of any changes in your circumstances. See Payment of pensions and benefits, page 28.

Accessing funds
If you have your pension and other benefits paid into an account, and become unable to manage your account, a carer or friend could apply to access the account on your behalf. See Access to Funds scheme, page 29.
Key points

There are three simple ways to help a person with dementia manage her finances if there is no power of attorney in place. These are: becoming an appointee to collect state pensions and other benefits; operating a joint account; and arranging to access funds by applying to the Public Guardian.

The Access to Funds scheme allows you to transfer funds from the person’s account to a designated account from which you can pay for day-to-day living expenses.

Authority to access funds usually lasts for three years.

You need to keep records for at least five years of what you spend on the person’s behalf.

You cannot overdraw either the original account or the designated account. If you find you need to spend more money than originally planned, you need to re-apply to the Public Guardian to vary the sums required.

Being an attorney for a person with dementia is a position of trust and you need to act reasonably and in good faith. You can be called to account for your actions as an attorney.

It is important that you know as much as possible about the person and her financial position, past and present wishes, likes and dislikes.

It is also important that you consult others with an interest in the care and welfare of the person with dementia.

Introduction

This chapter is for carers, relatives or friends who are helping people who have moderate to severe dementia with their financial matters.

There is a range of ways that you can help someone who can no longer manage money.

Money can cause problems for both the carer and the person with dementia. As the illness progresses, the person will become less able to cope with money. She may forget to pay bills, pay them twice, give away money, spend it unwisely, or lose it. Even in the early stages, many people with dementia find handling cash very difficult - for example, knowing how much coins and notes are worth, and counting change.

For many people, especially if they always handled finances, this can be upsetting. In time, someone else may have to take over more of these tasks. Some quite simple changes can make it easier for bills to be paid or pensions collected.
Helping someone with no continuing power of attorney
If the person does not have an attorney with financial powers and is no longer able to
grant a power of attorney, or there is no guardian with financial powers (see section on
guardianship page 49), there are three simple ways to help her with money which may be
all you need:

• becoming an appointee to collect state pensions and other benefits
• continuing to operate a joint account
• making arrangements to access funds held in the person’s sole name
  in bank or building society accounts.

Payment of pensions and benefits
If the person is unable to look after her own financial affairs you can ask the Department
for Work and Pensions (DWP) to appoint you (or someone else) to act on her behalf as an
appointee. You can get an application form to become an appointee from a local Department
for Work and Pensions office. If the person is over current State Pension age for a woman,
contact the Pension, Disability and Carers Service; if she is under State Pension age you
need to contact Jobcentre Plus. See Further help section in Volume 2 for contact details.
The DWP will visit both you and the person with dementia to decide if she needs an
appointee and to assess your suitability to become an appointee. As appointee you can
apply for benefits and collect them on behalf of someone who is mentally incapacitated,
but you cannot run the person’s bank account. You must tell the DWP of any change in her
circumstances.

An appointee has no authority to claim, receive or manage any other income other than
state benefits. However, some other organisations, such as benevolent societies and certain
employers, also run an appointee system for payments such as pensions. They may check
to make sure that you are a suitable person.

If it is not convenient for you to become an appointee, contact the DWP. They can arrange
for an organisation like the social work department to become a ‘corporate appointee’.

If the DWP believe that an adult is not able to manage her benefits they may suspend
payment of benefit until someone can be made appointee. They can do this even if the
person disagrees.

If an appointee does not act in the person’s best interests, anyone can ask the DWP to
investigate. If appropriate, they will cancel the appointeeship.

If you are an appointee for someone who dies before a benefit claim or appeal is decided,
you need to reapply for appointee status in order to settle any outstanding benefit matters.
An executor of a will can also pursue an outstanding claim or appeal on behalf of the
deceased.
Joint accounts
Many people have joint accounts where only one signature is needed on cheques (an ‘either or survivor clause’). If one partner becomes mentally incapacitated the other can continue to operate the account as before (unless you opted out of the scheme when the account was set up, or you are prevented by a court order from operating the account).

It is best to tell the bank or building society of the person’s incapacity. You may need to discuss safeguards, for example, if there is a risk that someone else might persuade her to sign large cheques or hand over large sums of money.

Usually, each person named on a joint account is taxed on half the interest from the account. However, if the money in the account all belongs to the person with dementia, get an ‘allocation of interest’ form from the Inland Revenue. They can then allocate all the interest to the person. If she is not liable to pay tax at all, you can get a form from the bank or building society for payment of the interest without deduction of tax.

Access to Funds scheme
The Access to Funds scheme is a simple method for allowing one or more individuals (such as a carer, relative, or friend), or an organisation, to have access to the bank or building society account(s) of the person to meet her living costs. It may also be used to make payments which are, or may become, due in respect of dependents. The scheme allows for flexibility in how the person’s money can be managed and used for her benefit. Applications to access funds are made to the Public Guardian, who is responsible for granting authority.

The scheme does not give you direct access to the person’s account nor does it transfer ownership of funds - they continue to belong to the person but cannot be accessed by her once authority is granted to someone else (called the ‘withdrawer’). Sole or joint withdrawers may be appointed, or a reserve withdrawer can be appointed to operate the fund on a temporary basis where there is no joint withdrawer to take over. You cannot apply to access funds if there is already a continuing power of attorney or financial guardianship in place.

What the Access to Funds scheme allows you to do
The scheme allows you to access funds held in a bank or building society account of the person with dementia, so that you can help her meet everyday living costs such as food, clothes, fuel bills, entertainment, or care fees.

In this scheme, funds can only be accessed where they are held in an account in the sole name of the person. You might not know what accounts she has in her name and what funds she has. If you don’t know anything about the person’s bank accounts, you can apply (fee £70) to the Public Guardian who can authorise banks or building societies to release
Simple ways for a carer to help with financial matters

information so that a decision can be made about the best way forward. This will enable you to decide if the Access to Funds scheme is appropriate. If the funds are substantial or her finances are complex, perhaps because she has debts, a Financial Intervention or Guardianship Order might be more suitable. (See page 48 for information about Guardianship and Intervention Orders).

Where the person does not have an account, the Public Guardian can authorise an account to be opened to enable an application to be taken forward. It is possible to open more than one account, for example, a savings account which pays reasonable interest as well as an account for day-to-day expenses.

Making an application to Access Funds
Ask the Public Guardian for an application form and the guidance notes. You will have to list what you will use the money for and approximately how much you need for each item. For example, you may need to pay the person’s bills like gas, electricity or council tax, and buy food for her. You should also put in costs for items such as a holiday for the person and clothes. If she has any arrears, for example, for care costs or bills which have not been paid, you can ask for a lump sum initially to clear these. Remember to take account of any bills which will arrive during the time it takes to make the application.

Your authority will normally last for three years before you have to renew it, so think ahead and include an allowance for inflation in the amounts you fill in on the form. Don’t worry if you make a slight overestimation – the money still belongs to the person with dementia and is still held in her bank account.

The application fee is currently £70.

You also need to give:

- details of the account belonging to the person with dementia that you want to access, known as the **current account**
- an undertaking to open a new account to manage the money, known as the **designated account** – this should be an account that will be convenient for you to use, and does not have to be at the same bank
- details of any direct debits and standing orders you want to continue to come from the current account, so that you don’t have to set them up again on the new designated account
- details of the primary carer and nearest relative, if it isn’t you and if you know who they are.

The application to the Public Guardian needs to be accompanied by medical evidence that the person is no longer able to manage. You will need to ask her GP or consultant to carry out an assessment of her capacity and provide you with a certificate giving their opinion. The application also needs to be read and signed by someone whom you have known for at least a year and who is willing and able to vouch for you.
Simple ways for a carer to help with financial matters

The Public Guardian will normally notify the person with dementia, the nearest relative and primary carer and anyone else he or she thinks has an interest. However, the person with dementia need not be notified if two doctors, one with specialist knowledge, advise that this information would be a serious risk to her health. This would only happen in exceptionally rare circumstances; it is not enough to say that the person would be upset or not understand the application.

Any of these people can object, so it is best to discuss your plans first. If the Public Guardian proposes for any reason to refuse the application, you will get a chance to be heard, and if that is not successful you can appeal to the sheriff. The Public Guardian can tell you how to go about this.

If the form is properly completed, your application should take about four weeks; but it can take longer if the Public Guardian’s office need to send it back to you for more information. If you are unsure about anything on the form, the Public Guardian’s office can help you fill it in correctly.

Opening a designated account
If your application is successful, the Public Guardian will issue you with a certificate. The certificate is usually valid for three years; after this you must reapply. You will need this certificate to access the funds to be used for the purposes agreed in the application and to open the designated account, which will be in your name on behalf of the person. The designated account may be set up with any bank or building society.

Where direct debits or standing orders are already in place, these may continue or others may be put in place.

When you have your certificate to access funds you may apply for a cheque book or cheque guarantee card or any cash withdrawal card in relation to the designated account.
Transferring funds
While the scheme is mainly to cater for the day-to-day needs of the person, it also allows for the movement of funds between accounts which the person already has and those set up on her behalf. Requests to transfer funds may be authorised by the Public Guardian. The scheme aims to allow accounts to be managed as flexibly as possible for the benefit of the adult. This part of the scheme also helps if you need money to pay for an expense that was not planned for in the original application.

If the person’s monthly living costs change, an application has to be made to vary the amounts you need from the person’s funds. There is a fee of £15 for this so it is a good idea to make sure that you estimate the amounts you need as accurately as possible on the original application.

Request for lump sums
The scheme allows for requests for a lump sum to be made. This might be needed, for example, to pay off debts such as care home fees that may have built up or to meet the cost of aids and adaptations to the person’s home.

Closing accounts
You can apply for authority to close any of the adult’s accounts and stop existing standing orders or direct debits.

Your duties as a withdrawer
The Scottish Government has a Code of Practice which will give you guidance on becoming a withdrawer (see Further reading, Volume 2, page 60). The Public Guardian’s office also provides information leaflets.

Being a withdrawer for someone, on your own or as a joint withdrawer, is a position of trust. You have a legal duty to act with due skill and care, and to act reasonably and in good faith. If you do, you are not personally liable for any financial loss to the granter. But if you abuse your position, you are legally liable to make good any losses. You are not allowed to overdraw on either of the accounts, and the bank should not allow it. If you do, you are personally liable for the interest and charges on the person’s account or the designated account. However, a withdrawer cannot be held personally liable for debts incurred by the person they act for.

You must follow the principles of the Adults with Incapacity Act and the Code of Practice, including taking the person with dementia’s wishes into account. You must keep records of what you spend, which you may have to show to the Public Guardian, including bank statements and receipts for single items costing £50 or more. You should keep records for at least five years after you cease to be a withdrawer. The Office of the Public Guardian will send you a useful booklet for recording expenditure when you are given authority to access...
funds. This booklet is called *Access to Funds: a guide for withdrawers*. You must keep the person’s affairs confidential and notify the Public Guardian of any change in details, such as changes of address.

It is good practice to use direct debits and standing orders for regular payments. If there are shared expenses, for example, a shared electricity bill, divide these reasonably. You can refuse to pay anything you think is unreasonable. If an unforeseen major expense comes up, for example, an expensive trip to see distant relatives, you cannot cover this if it was not included in the original application. You should contact the Office of the Public Guardian for advice. You may need to reapply to access funds at a higher level.

Your authority to access funds will end if a financial guardian is appointed to manage the same funds. Your authority will also end if the person dies or recovers the ability to look after her money. Tell the Public Guardian if you want to give up the responsibility. Another relative or friend could apply instead.

**Access to Funds by organisations**
Some people with dementia may not have relatives or friends who are willing or able to access and manage their funds. It is now possible for organisations as well as individuals to apply under the Access to Funds scheme. This may be appropriate for statutory, voluntary and private organisations providing services to adults with disabilities and their carers. Organisations wishing to apply have to provide information to the Public Guardian to show that they are fit and proper to operate under the scheme.

**Transferring from guardianship to the Access to Funds scheme**
If you have been appointed as financial guardian but the reasons for having financial powers no longer exist (for example if funds have reduced considerably, or management of assets is no longer necessary), you should apply to the Office of the Public Guardian for the management of funds to be transferred to the Access to Funds scheme.

**Outlays and expenses**
The Public Guardian charges fees for applications under the Access to Funds scheme (currently £70). The doctor may also charge a fee for carrying out an assessment of capacity and providing the certificate. These costs can be recouped from the person’s funds as part of a lump sum request.

A withdrawer cannot be paid for managing the person’s funds but can claim any reasonable out-of-pocket expenses from the person’s funds, for example, for travel costs.
Certificates of authority
When any part of an application is granted, the Public Guardian will issue a certificate of authority and record details on the Public Register. The certificate will outline exactly what is authorised.

During the life-time of an Access to Funds appointment it is possible that several certificates of authority may be issued by the Public Guardian depending on what is needed. For example, you may initially apply to open a bank account to access the person’s funds; if the level of funds needed has changed considerably, a new certificate will be required.

For full details of how to apply to the Access to Funds scheme and further guidance you will need to request a free copy of the Code of Practice: Access to Funds, from the Office of the Public Guardian (see Further reading, Volume 2, page 60).

Accessing funds or financial guardianship?
You may not know the full extent of the assets of the person with dementia and whether the work and expense of applying for financial guardianship is necessary. See Guardianship – for continuing help, page 49. It is difficult to confirm the details of accounts with the financial institutions concerned as they are bound in law to keep such information confidential.

If in doubt, it is usually best to apply to access funds in the first instance since this is the least restrictive intervention necessary and costs only £70 to register. If you later find that the person’s assets are more extensive and need considerably more management, then an application for financial guardianship can be made.

Using a continuing power of attorney
A continuing power of attorney is sometimes referred to as a financial power of attorney. It relates to the powers which the person with dementia may have granted to someone earlier in the illness to look after her financial and property affairs. If it is a continuing power of attorney signed after 2 April 2001, it must be registered with the Public Guardian and can then be used.

If the power of attorney was signed before 2 April 2001 but after 1 January 1991 it does not need to be registered and will remain valid when the granter becomes mentally incapacitated (unless it was deliberately set up not to do so). Powers signed before January 1991 were not continuing. The position with these is not clear, but in practice they may continue in use unless challenged. Check with a solicitor if there are any difficulties.
If you are someone’s attorney, you will need a copy of the document issued by the Public Guardian, who will also provide a certificate of registration. To use the power of attorney, you should show these to whoever you are dealing with; for example, bank or building society staff.

**Registering a continuing power of attorney (made after April 2001)**

To operate a continuing power of attorney which was made after 2 April 2001, it must be registered with the Public Guardian (see *Further help*, Volume 2, page 56). The fee is currently £70. Often the power of attorney is registered just after it is drawn up and may operate straight away; but if the power of attorney states that a specific event must happen before it can come into operation or that incapacity must be certified by a doctor, you would need to provide evidence to the Public Guardian.

The person who gave you the power of attorney is known as the **grantor**. The Public Guardian also requires evidence in writing that the grantor has agreed to the appointment and will notify anyone else who the grantor has instructed to be informed. The Public Guardian will also check that you are willing to act as attorney.

All being well, the Public Guardian will then authenticate a copy of the document. You will need this in order to use the power of attorney. You can get extra copies for a fee of £15 plus £5 for the first 10 pages (£0.50 per page for additional pages) of the document from the Public Guardian. The Public Guardian will also provide you with information and advice on how to operate the power of attorney and your role as attorney.

**A position of trust**

Being attorney for someone is a position of trust. You have a legal duty to act with due skill and care, and to act reasonably and in good faith. If you do, you are not personally liable for any financial loss to the grantor. But if you abuse your position, you are legally liable to make good any losses.

**Your duties as attorney include:**

- following the Act’s principles (see page 4, *Principles of the Adults with Incapacity Act*) and the Code of Practice (see *Further reading*, Volume 2, page 60)
- consulting with the grantor and others on actions you propose to take
- keeping records
- notifying the Public Guardian of any change in details, such as a change of address for you or the grantor
- keeping the grantor’s affairs confidential
- keeping the grantor’s affairs separate from your own.
Records
The records you keep should include receipts, for example, for expenditures on single items of £50 or more, instructions to banks, correspondence and accounts. You should also keep contact details for the granter, the person’s nearest relative, primary carer, welfare attorney or welfare guardian if there is one and any significant others (because you have a duty to consult them). You also need details for any joint or substitute attorney, notes of any discussions of the person’s expressed wishes, an up-to-date list of his or her assets and where relevant papers are kept.

Powers of attorney made before April 2001
The principles of the Adults with Incapacity Act also apply to operating a power of attorney made before the Act came into force on 2 April 2001 (See Principles of the Adults with Incapacity Act, page 4). These older powers of attorney do not have to be registered with the Public Guardian, so there are fewer safeguards. It is good practice to keep records, but this is not a legal duty. However, an attorney who does not carry out his or her duties properly can still be placed under the supervision of the Public Guardian.

If you are worried about losing the document, a solicitor may be able to certify a photocopy as a true copy that you can use. If the power of attorney was registered with the Registers of Scotland (not the same as registering new powers of attorney with the Public Guardian), you can ask the solicitor to obtain an extract copy, or write to the Keeper, Registers of Scotland, Erskine House, 68 Queen Street, Edinburgh, EH2 4NF. Tel: 0845 607 0161. There is likely to be a charge for this.

Information and consultation
It is very important that you have as much information as possible about the person with dementia’s current financial situation and her wishes, past and present. When you take on your duties as attorney, talk to the granter and to her nearest relative and primary carer and anyone else involved in her care, such as her welfare attorney and other relatives and friends. You will need to consult them about the decisions you take. It is important that everyone understands your role as continuing attorney and how you will carry it out and consult (for example, regular meetings of those involved might be very useful).

The Scottish Government has produced a code of practice for attorneys which you should use to guide you (see Further reading, Volume 2, page 60). If you need advice on using your financial powers, the Public Guardian (see Further help, Volume 2, page 56) can advise you.

If you have not previously been closely involved in the person’s financial affairs, you should review the current situation and consider whether anything needs to be improved. For example, should the weekly allowance for heating and food be increased, is the house in need of care and repair (given that the person may have been neglecting herself and her home for some time), what savings and investments are there and are they earning good interest rates, what income and outgoings does she have and is she receiving all benefit entitlements? The code of practice will give you more guidance on what to consider.
When a power of attorney ends
Once it is being used, a power of attorney will end if:

- the granter cancels it whilst still capable, recovers or dies
- the attorney resigns (if the power of attorney was made after 2 April 2001, you must give 28 days’ notice to the Public Guardian, unless there is a joint or substitute attorney willing to take over)
- the attorney becomes bankrupt
- the attorney dies
- the attorney is married to the granter and they separate or divorce (unless the power of attorney says otherwise)
- the court appoints a guardian with relevant powers to take over the granter’s affairs.

Safeguards
The Public Guardian has a duty to investigate any legitimate complaint (from anyone) about how an attorney is carrying out his or her duties. If you are worried about how an attorney is dealing with a person’s finances, you can contact your local authority or the Public Guardian’s office (see Further help, Volume 2, page 56) to discuss the issue. They both have a duty to investigate. The Public Guardian will usually ask you to put your concerns in writing. If necessary the case can be referred to the sheriff, who can make the attorney submit accounts for audit. The sheriff may order that the attorney is supervised by the Public Guardian, or take away some or all of the attorney’s powers.

Anyone with an interest has the right to apply directly to the sheriff to direct the attorney to do something or not do something, or to remove the attorney or place him or her under supervision, but there are costs involved in this option.
Chapter 5
Simple ways for a carer to help with welfare matters

Key points

A welfare power of attorney must be registered with the Public Guardian for it to be used to manage the person’s personal welfare.

The local authority or Mental Welfare Commission will investigate complaints about welfare attorneys.

A doctor is required by law to sign a certificate of incapacity to give him or her authority to treat someone who is incapable of giving consent to a specific treatment or treatments.

As a carer you have a right to be consulted about any medical treatment proposed by the person’s doctor. Only if the person needs emergency treatment or where it is very difficult for the doctor to contact you, can he or she go ahead and treat (unless you have given prior permission).

The doctor must first specifically assess the person’s mental capacity to give informed consent to treatment.

The treatment must be to benefit the person.

If you disagree with the treatment proposed by the doctor, there is a procedure for dealing with this, including seeking a second opinion.

The Adults with Incapacity Act says nothing about not treating a patient – it is only about having authority to give beneficial treatment.

The Mental Health (Care & Treatment) (Scotland) Act allows for people to be placed or detained in psychiatric hospital or in the community under different kinds of compulsory order

A person with dementia can choose a Named Person to support and safeguard her interests under the Mental Health Act

The Adults with Incapacity Act sets out rules for what research can be done using people who cannot consent.

Introduction
This chapter is for carers, relatives or friends who are helping people who have moderate to severe dementia with their welfare matters.

Each of us takes many decisions which affect our personal welfare: when to get up, what to wear, what to do during the day. We also take larger decisions, such as what medical treatment to have, what services to use and where to live. Even people with quite severe dementia are often still able to make day-to-day decisions, such as what to eat.
Simple ways for a carer to help with welfare matters

In many cases, people with dementia may also be able to take larger decisions, perhaps with help; for example, deciding to go to a day centre or receive home support services. It is important that people with dementia are enabled to take as many decisions for themselves as possible, for as long as they can. Carers and relatives do not have an automatic legal right to take decisions for someone with dementia, though their opinion is very important.

However, as the illness progresses, it becomes harder for people with dementia to take decisions. It may become impossible for someone to understand the consequences of important decisions in order to decide in an informed way.

The Adults with Incapacity Act allows people to choose who they would like to take personal welfare decisions for them if they no longer can, by granting a welfare power of attorney. The Act also now makes it possible for doctors to provide treatment if a patient cannot give consent and no-one else has this power on their behalf. It also makes clear rules for research involving people with dementia.

Welfare powers of attorney
The person may have signed a power of attorney earlier in the illness naming someone to look after her welfare. This will probably be a power signed after 1 April 2001; before then, powers of attorney did not generally include welfare powers. Being someone’s welfare attorney means that you take decisions, but it does not need to be you who provides the day-to-day care for the person.

Unlike continuing powers of attorney, a welfare power of attorney can only be used once the granter has become incapable.

Using a welfare power of attorney
In order to operate a welfare power of attorney, the document must be registered with the Public Guardian (see Further help, page 56). The fee is currently £70. Welfare powers of attorney can be registered as soon as they are signed, unless the power of attorney specifies that a particular event must happen before it can be registered, such as mental incapacity relating to welfare matters. In this case, you must provide evidence of this (for example, medical certificates).

If you are someone’s attorney, you will need a copy of the document issued by the Public Guardian, who will also provide a certificate of registration. To use the power of attorney, you should show these to whoever you are dealing with, such as a doctor or social worker.

The person who gave you the power of attorney is known as the granter. When the power is registered, the Public Guardian will check that you are willing to act as attorney, and will notify the granter and anyone else specified. All being well, the Public Guardian will then authenticate a copy of the document. The Scottish Government has produced a code of practice for attorneys which you should use to guide you (see Further reading, Volume 2, page 60).
Simple ways for a carer to help with welfare matters

A position of trust
A welfare attorney is in a position of trust and has similar duties to a financial attorney with regard to following the principles of the Adults with Incapacity Act and acting reasonably and in good faith. See A position of trust, page 35 for an explanation of these duties.

Records
You should keep records of the main decisions you take as welfare attorney, and record events such as periods of illness. You should also keep contact details for the granter, her nearest relative, primary carer, continuing (financial) attorney or guardian if there is one, any significant others (because you have a duty to consult them) and any joint or substitute welfare attorney. Keep notes of any discussions of the person’s expressed wishes and where relevant papers (such as an advance statement or advance directive) are kept.

Information and consultation
It is very important that you have as much information as possible about the person with dementia’s current situation and her wishes, likes and dislikes, both past and present. When the granter becomes incapacitated and you take on your duties as attorney, talk to the person with dementia and to her nearest relative and primary carer and anyone else involved, such as the person’s continuing attorney and other relatives and friends involved in her care. You will need to consult them about the decisions you take, and it is important that everyone understands your role as welfare attorney and how you will carry it out and consult (for example, regular meetings of those involved might be very useful). It is important always to use the principles of the Act to guide the way in which you reach decisions. (See Principles of the Adults with Incapacity Act, page 4).

You may need to review the current situation and whether anything needs to be improved. For example, is the person happy, does she need more help or services, is her living situation suitable and does she have access to activities she enjoys? The code of practice will give you more guidance on what to consider.

If you need advice on using your welfare powers, your local authority social work department or the Mental Welfare Commission (see Further help, Volume 2, page 56) can advise you.

When a power of attorney ends
Welfare powers of attorney can end in the same ways as continuing powers (except for bankruptcy). See When a power of attorney ends, page 37.

Safeguards
Local authorities have a general duty under the Adult Support and Protection Act to investigate concerns about the welfare of an adult. If someone has concerns about how a welfare attorney is using, or not using, his or her powers, this can be raised with the local authority social work department, who will investigate. If the local authority decides not to investigate or the investigation is not satisfactory, the Mental Welfare Commission (see Further help, Volume 2, page 56) can investigate.
Simple ways for a carer to help with welfare matters

If necessary, the case can be referred to the sheriff, who may order the local authority to supervise the attorney, or take away some or all of the attorney’s powers. When they supervise an attorney, the local authority will visit the person with dementia and the attorney regularly, usually at least monthly. They will also inspect the attorney’s records.

**Medical treatment**

As long as an adult is capable of understanding what proposed medical treatment involves, her consent is necessary. It is important to remember that capacity to give informed consent must be assumed, unless there is evidence to suggest otherwise. The diagnosis of dementia on its own is not enough to conclude that someone is unable to consent. Without consent, doctors have no authority to go ahead.

The Adults with Incapacity Act brought new rules for treatment when someone is not able to consent. If a doctor believes that a treatment will benefit a patient with dementia who is incapable of consenting, the doctor should sign a certificate of incapacity under Section 47 of the Act which gives him or her authority to treat the person. Before doing so, the doctor should consult with the carer and anyone else closely involved with the person, to get their views on the person’s ability to give consent. The doctor is expected to do this where it is ‘reasonable and practicable to do so’. This means that if you have not left a contact telephone number, the doctor can’t be expected to consult you. This consultation, or attempt to consult, should be recorded on the incapacity certificate.

Where the person with dementia needs a single medical procedure, such as an operation, a single certificate of incapacity would be appropriate. However, for some people, such as those with multiple physical and mental health needs, it would be impractical, unreasonable and unnecessary to issue a certificate of incapacity for every medical or health care treatment. When several treatments are required or anticipated in the foreseeable future, the doctor can draw up a Medical Treatment Plan, and again will consult with the carer and anyone else closely involved.

Where there is a legally appointed proxy or substitute decision maker, such as a welfare attorney or a welfare guardian with medical decision making powers, the doctor must seek a decision from that person, where it is reasonable and practicable to do so.

**Assessment of capacity**

Where a doctor is not sure that a patient can give informed consent to treatment, he or she must assess the person’s capacity to consent. Mental capacity is not ‘all or nothing’, and this assessment must be specific to whether the person is capable of making decisions relating to these particular matters. It should take into account her ability to understand the options and any risks or benefits, and make and communicate a decision. The doctor must make every effort to communicate with the person with dementia.
Simple ways for a carer to help with welfare matters

Certificate of incapacity
A doctor who wants to treat someone who is not capable of consenting must complete a certificate of incapacity. The doctor must apply the principles of the Act before deciding to do this (see Principles of the Adults with Incapacity Act, page 4). It will usually be the person’s GP who completes the certificate, but other doctors, such as hospital specialists in charge of a particular course of treatment, will also complete certificates.

The Scottish Government broadened the range of people with the authority to grant a certificate of incapacity for the purposes of medical treatment. A range of health professionals other than ‘registered medical practitioners’ have been granted this authority, provided they have received relevant training. These practitioners include dentists, nurses and ophthalmic opticians. Practitioners’ certificates only apply to their own kind of treatment; for example, dentists can authorise dental treatment but not eye care.

The certificate sets out what treatment is proposed, and should last for the minimum time necessary, with a maximum of a year or, in some circumstances, three years; for example, where the condition of the person is unlikely to change or deteriorate.

The doctor is required to record on the certificate the consent of a proxy if there is one; or if there is no proxy, that the consultation has taken place with carers.

A person who is assessed as incapable by a doctor has the right to appeal to the sheriff if she disagrees. A solicitor can help with this, and the person may get legal aid, depending on her financial circumstances.

What treatment is authorised
The doctor’s authority to treat can cover any procedure or treatment designed to safeguard or promote the person’s physical or mental health. This could include simple drug treatments or major surgery; tranquillisers or sleeping tablets; or strictly non-medical treatments such as dental procedures or artificial feeding. The doctor can authorise other doctors, nurses or other professionals such as dentists to carry out the treatment.

A certificate might be for one particular treatment, such as for an operation, or could be for a range of treatments, for example, for the continuing care of someone with a number of medical conditions. The Scottish Government Code of Practice on medical treatment and research (see Further reading, Volume 2, page 60) says that it is good practice in this case for the doctor to attach a treatment plan covering the treatments that can be foreseen over the period of the certificate. For example, for one individual this might include treatment for arthritis, diabetes, heart disease and behaviour disturbance associated with dementia, as well as fundamental healthcare procedures such as nutrition, hydration, skin care and pain relief.

The Act prohibits the use of force or detention, unless it is immediately necessary and only for so long as is necessary in the circumstances, and this should be recorded in the person’s notes. A certificate will not allow a doctor to authorise certain treatments.
Simple ways for a carer to help with welfare matters

Medical treatment, consent and the rights of carers and proxies

**Right to decide**
The law states that where the doctor has assessed the person with dementia as being unable to give informed consent to a proposed treatment, he or she must obtain the consent of any proxy or proxies with medical decision-making powers (if appointed), before going ahead with the proposed treatment. Such an appointment should be clearly marked up on the person’s medical record.

**Right to be consulted**
Where there is no proxy, the law states that the doctor must consult on treatment decisions with the primary carer and family members closely involved in the person’s care. Again, those to be consulted should be clearly recorded in the person’s medical record.

In both cases it must be reasonable and practical for the doctor to contact the proxy or carer(s). This means that the doctor will need to have up-to-date contact details, mobile phone numbers, and so on. It will also be important for the doctor to know if you (the proxy/carer) wish to be contacted at any time of the day or night, or if you are going to be out of contact for a period.

**Disagreements**
Both the proxy and the main carer have the same right to object to a proposed treatment and to use the procedure for dealing with disagreements. You can contact the Mental Welfare Commission to request a second opinion from a doctor from the relevant specialism. The second doctor must consult with you, the doctor and others with a close interest in the person. If the second doctor agrees with the first, then the treatment can go ahead. But if you still disagree you can go to the Court of Session for a decision.

If the second doctor agrees with you (the proxy/carer), then the first doctor must comply or can go to the Court of Session. An appeal to the Court of Session would require specialist legal advice and could be costly, although legal aid may be available.

**Emergency treatment**
Treatment without consent can still be given in an emergency without the need for a certificate of incapacity, in order to preserve life or prevent serious deterioration.

**Withdrawal and withholding of treatment**
The Act says nothing about not treating a patient. The Act is only about having authority to give beneficial treatment. Doctors have General Medical Council and British Medical Association guidance about withholding and withdrawing treatment which they consider unnecessary or not to the benefit of the patient. In such circumstances it would be good practice for the doctor to consult, just as for the Act. Euthanasia is currently illegal in Scotland and the rest of the UK.
Simple ways for a carer to help with welfare matters

Mental Health (Care and Treatment) (Scotland) Act 2003
The Mental Health (Care and Treatment) (Scotland) Act 2003 (MHCT) came into effect in October 2005, replacing the Mental Health (Scotland) Act 1984. This section gives basic information about the Act.

The MHCT sets out the rules governing when a person who has a mental disorder (including dementia) can be sent to a psychiatric hospital and detained there even when they do not want to be. It also allows for restrictions to be placed on an individual in the community, such as living at a designated address or attending for treatment.

Most people with dementia will not need to be detained or treated against their will for mental disorder. But sometimes it may be necessary, and this section explains how it works and the safeguards.

Principles of the MHCT
A set of principles underpin the Act. Anyone who takes any action or makes any decisions about an individual’s care and treatment under the Act has to take account of:

- the present and past wishes and feelings of the individual
- the views of the individual’s named person, carer, guardian or welfare attorney
- the importance of the individual participating as fully as possible
- the importance of providing the maximum benefit to the individual
- the importance of providing appropriate services to the individual
- the needs and circumstance of the individual’s carer.

The Act also describes how these functions must be carried out. They must:

- involve the minimum restriction on the freedom of the patient
- encourage equal opportunities.

Powers under the MHCT
The Act allows for people to be placed on different kinds of compulsory order, according to their particular circumstances. There are three main kinds of order which might affect some people with dementia:

- emergency detention: allows someone to be detained in hospital for up to 72 hours where hospital admission is required urgently to allow the person’s condition to be assessed. It will only take place if recommended by a doctor (usually a GP) and there is no appeal process
- short-term detention: allows someone to be detained in hospital for up to 28 days. It will only take place where it is recommended by a psychiatrist and agreed by a mental health officer (MHO), a specialist social worker. It is possible to appeal this order - the MHO or an advocate should be able to advise on the appeal process.
- compulsory treatment order (CTO): allows someone to be detained in hospital, or imposes restrictions in the community, for up to six months, with the possibility of further extensions. A CTO has to be approved by a Mental Health Tribunal. A mental health officer has to apply to the Tribunal. The application must include two medical recommendations and a plan of care detailing the care and treatment proposed for the patient. The patient, the patient’s named person (see Safeguards, below) and the patient’s primary carer are entitled to be present and put forward their point of view. There is a review process and the order may not necessarily last the full six months.
Simple ways for a carer to help with welfare matters

The MHCT sets strict conditions about when these powers may be used. These are:

- that the person has a mental disorder (this includes dementia)
- medical treatment is available which could stop her condition getting worse, or help treat some of her symptoms
- if that medical treatment was not provided, there would be a significant risk to the health, safety or welfare of the person or to others
- because of the person’s mental disorder, her ability to make decisions about medical treatment is significantly impaired
- that the use of compulsory powers is necessary.

**When can people be given treatment without their consent under the MHCT?**

Depending on which type of compulsory order is being applied, medical treatment for mental disorder may or may not be given without the individual’s consent.

If a person is subject to an emergency detention, she cannot be treated without her consent unless the treatment is required urgently, or she is being treated under the Adults with Incapacity Act.

Someone who is subject to short-term detention or a compulsory treatment order can be given treatment for mental disorder such as drug treatments, but also nursing, care, psychological interventions, and rehabilitation.

**Safeguards**

The new Act has a more informal way of hearing cases than the old Mental Health Act. Instead of the Sheriff Court, there is a new Mental Health Tribunal. The Tribunal considers care plans, decides on compulsory treatment orders and carries out reviews. It consists of a panel of three people – a lawyer, a psychiatrist and a general member of the public. The Tribunal hears cases locally.

A person with dementia can choose someone, called a named person, to support her in case, in the future, she might be detained or compulsorily treated under the MHCT. The named person has the same rights as the person to be notified of, attend and be represented at Tribunal hearings and to information about the person with dementia’s case. The named person need not be the same person as the welfare attorney although he or she could be. This power could be written in to the person’s welfare power of attorney document.

The named person has a different role from a welfare attorney, although they could be the same individual if the person with dementia so wishes. He or she can only do things which relate to the MHCT, whereas a welfare attorney has broader responsibilities. A welfare attorney takes decisions on behalf of the person with dementia, but a named person can act independently to safeguard the person with dementia’s interests. For example, a named person can apply to the Tribunal for a review of the person’s compulsory treatment order with or without her approval. The named person has the right to put his or her own view forward, even when the person with dementia has a different view.
Appointing a named person is a simple process that involves no cost. The Scottish Government has published *A Guide to Named Persons*, which includes a nomination form. See *Further reading*, Volume 2, page 60.

If the person with dementia has not chosen a named person, and detention or compulsory treatment under the MHCT is being considered, then the primary carer will be the named person (this is the carer who provides most or all of the person’s care and support). If there is no primary carer, then the person’s nearest relative will be the named person. If a person has become the named person by default and does not want to act in this role, he or she has to give notice to the patient and the local authority for the area in which the patient resides. The Tribunal can also appoint a named person.

The Mental Welfare Commission has a duty to make sure that treatment and care of people with a mental disorder is legal. The Commission monitors the use of the Act, including the application of the principles. They also inspect records, carry out investigations and provide advice and information. See *Further help*, Volume 2, page 56.

**Advocacy**

The MHCT gives every person with a mental disorder, including a person with dementia, a right of access to independent advocacy services. NHS Boards and local authorities have to ensure that independent advocacy services are available. This right to advocacy applies to all mental health service users, not just to people who are subject to powers under the Act, but does not extend to carers.

**Legal representation**

If the person with dementia is going to a tribunal, she may also wish to seek legal representation, as well as having an advocate, named person, or welfare attorney. The Law Society of Scotland can provide details of solicitors who have relevant experience. See *Further help*, Volume 2, page 56.

**Advance statements**

Under the MHCT, people are able to make *advance statements*, setting out how they would wish to be treated if they become unwell and are subject to compulsory treatment under the MHCT at some point in the future. The Tribunal and anyone responsible for giving treatment under the Act has to take an advance statement into account, although in some circumstances they may override it in the best interests of the person.

An advance statement is simple to complete and costs nothing. The Scottish Government has published *A Guide to Advance Statements*. See *Further reading*, Volume 2, page 60. See also *Advance statements, advance directives and living wills*, page 20.

**Unlawful detention**

A person is a ‘voluntary patient’ in a psychiatric hospital if she is not detained under the MHCT. If a voluntary patient is being detained against her will, for example, in a locked ward, she (or someone else such as a welfare attorney, guardian, named person or someone else with an interest in the patient’s welfare) can appeal to the Tribunal under section 291 of the Act. If the Tribunal decides the patient is being unlawfully detained, they can order the managers of the hospital to stop detaining her.
Simple ways for a carer to help with welfare matters

Entry, removal and detention powers
If someone is ill-treated or neglected or unable to look after herself, she could be removed to a ‘place of safety’ under the MHCT if necessary. It is also possible to take someone from a public place to a place of safety where it is in the interests of that person or where it is necessary to protect other people.

The Act allows for a voluntary patient in hospital who wishes to leave hospital to be prevented from leaving and to be detained there by a suitably qualified nurse for two hours to get a medical examination by a doctor.

Taking part in research
People with dementia may want to participate in medical or other research, to help in the search for more knowledge about the illness and diagnosis, treatment and prevention. However, their consent must not be taken for granted. Before dementia starts and at the earlier stages of the illness people will be able to take such decisions for themselves, and may be able to consent to research. They may wish to indicate their general willingness to participate in research by making an advance statement to say so, or by granting someone a welfare power of attorney with the power to consent to research on their behalf. Later in the illness this will become difficult or impossible. The Adults with Incapacity Act sets out clear rules for what medical, surgical, psychological, nursing or dental research can be done using people who cannot consent.

Under the Act, research involving people unable to consent to take part can only be done if it could not be carried out with people who can consent. The research must be about the cause, diagnosis, care or treatment of the person’s illness. It must be likely to produce a ‘real and substantial benefit’ for the person, or to bring understanding that will help other people with the same condition.

The research must be approved by a special Ethics Committee and must involve no more than minimal foreseeable risk or discomfort. The person should be withdrawn from the research immediately if at any time she objects in any way or appears to suffer discomfort.

The research cannot involve anyone who is unwilling to take part. The researchers must get consent from the person’s welfare attorney or guardian, if there is one, or else from the nearest relative. If it is not possible to get this consent, it will not be legal for the person with dementia to participate.

Examinations, organ donation and research after death
Decisions about what happens to the body of a person after death are in the hands of that person’s next of kin, who must be consulted by any professional. A person in the early stages of dementia may wish to make an advance statement to be taken into account in deciding what happens after her death. See also Donating your brain for medical research, page 20.
Chapter 6
What to do if you need more powers

Key points
You can go to court for an intervention order for a one-off decision or action to help someone who is mentally incapable. This can be for a financial or a welfare matter.

You can apply to court to become the person’s guardian if she will need continuing help over a long period. Guardianship can cover financial or welfare matters, or both.

You can use a solicitor to help you apply or you can do it yourself.

Get the Carer’s guide to making an application for an intervention or guardianship order, free from the Scottish Government. You can also request the more detailed Code of Practice.

Guardians with financial powers are supervised by the Public Guardian, who will check the accounts regularly and can investigate any complaint.

Guardians with welfare powers are supervised by the local authority. The Mental Welfare Commission also has a duty to visit people under guardianship and protect their welfare.

This chapter is for carers, relatives or friends who are helping people who have moderate to severe dementia with financial or welfare matters.

If the person with dementia has no power of attorney, or if something needs to be done which is not covered by her power of attorney, you can go to court for an intervention order (for a one-off decision or action) or for guardianship (if she will need help over a long period). Intervention orders and guardianship can cover financial matters, welfare matters or both.

There is a useful and comprehensive Code of Practice for guardians and people holding intervention orders. See Further reading, Volume 2, page 60. The Code is also useful for people thinking about applying to be appointed, and covers how to apply, the court process, registration with the Public Guardian and how to carry out the duties of intervener or guardian.

Before deciding whether or not to apply for guardianship for financial matters, you should consider whether it would be more appropriate to apply to access the person’s funds in her bank or building society account instead. See Access to Funds scheme, page 29.

**Intervention order or guardianship?**
The Adults with Incapacity Act’s principle of minimum intervention means that an intervention order should be used where that is sufficient to deal with the situation. However, people with dementia may need the continuing involvement of a guardian to help manage their finances and care arrangements.

For example, it might, in theory, seem that an intervention order is enough for the sale of a house to pay for fees where the person needs 24 hour support in a care home. However, arrangements need to be in place to enable the person’s funds to be spent for their benefit on an ongoing basis. In this situation it would be better for an application to be made for welfare and financial guardianship.
What to do if you need more powers

If an application for guardianship is made, and the sheriff feels that the powers requested are inappropriate then an intervention order may be granted instead (on the principle of minimum intervention to benefit the adult). However the system does not work the other way around. If you apply for an intervention order and the sheriff thinks that is insufficient, then you will have to start again in making a new application for guardianship. The requirements for making an application for an intervention order or for guardianship are the same.

**Intervention orders - for one-off decisions or actions**

An intervention order is intended for a situation where a person who is unable to do it herself needs a one-off decision made or someone to take an action.

An order may direct a specific action to be taken and/or authorise someone – an ‘intervener’ – to take an action or make a specified decision. For example, an order might:

- authorise that someone’s house or car is sold or a more suitable one bought
- let someone sign a tenancy agreement on behalf of the person with dementia
- authorise building a house extension
- give someone the power to make a specific decision about medical treatment.

**Guardianship - for continuing help**

Guardianship under the Adults with Incapacity Act is intended for ‘continuous management’, to help a person who needs long-term involvement from someone else to make decisions involving her financial or welfare matters, or both.

A guardian is normally appointed for three years to start with, but could be appointed for any appropriate period, including indefinitely. There can be joint guardians with the same or different responsibilities. Guardianship is a responsibility, and some people may feel more comfortable sharing the role, usually with another family member. A substitute guardian can also be appointed, to take over if the original guardian becomes incapacitated, goes abroad or dies. This is a good idea, especially for older people applying for guardianship.

**What a guardian could do**

A guardian can apply for any combination of powers over the person’s finances, property and welfare. These powers might include:

- managing all the property or financial affairs of the adult, or specified aspects
- dealing with all aspects of the personal welfare of the adult, or specified aspects
- pursuing or defending nullity of marriage, divorce or separation
- authorising the adult to carry out transactions the guardian may specify
- medical decision-making powers.

The sheriff may grant all the powers requested if he or she feels that is appropriate, taking into account the principles of the Act, and assessment reports on the adult’s capacity.

A guardian can delegate duties, for example, by giving a family member or paid carer money to manage day-to-day expenses. However, he or she is still responsible for the care of the adult and/or the adult’s funds.
What a guardian cannot do
A guardian cannot have power to:

- place the adult in a hospital for the treatment of mental disorder against her will
- consent on behalf of the adult to certain medical treatments covered under the Mental Health Act or which Scottish Ministers may list
- make gifts from the person’s estate without permission from the Public Guardian
- consent to or prevent the adult marrying
- make a will on behalf of the adult
- sell property without first obtaining the Public Guardian’s permission. Once the guardian gets an offer for the property, the Public Guardian must agree the purchase price before it can be sold. In some circumstances the Public Guardian may agree to a price lower than the market value, but only if it can be shown that this is of benefit to the adult and follows the adult’s past and present wishes.

Applying for an intervention order or guardianship

Who can apply
Anyone with an interest (including the person with dementia) can apply for an intervention order or guardianship. Often the applicant will be a carer or relative but, if an intervention order or guardianship is needed and no-one else is applying, the local authority must apply. The applicant does not have to be the same person named as the intervener or guardian. For example, if you are willing to be guardian but you don’t feel able to make the application, the local authority could apply, as long as they agree that it is necessary. See section Local authority and individual responsibilities, page 55.

Guardians for financial matters must be individuals, such as a friend, relative or solicitor. The local authority is not allowed to act as guardian for financial matters but they still have a duty to make arrangements in certain circumstances. However, for welfare matters, the guardian could be the chief social work officer of the local authority, who would delegate the actual work to a member of staff. They must, within seven days, inform the person with dementia, her primary carer and nearest relative of the name of the responsible member of staff. In considering an application, the sheriff must also take account of the views of the adult, including any views expressed on her behalf by a person providing independent advocacy services.

Deciding to apply
You must apply the principles of the Act (see Principles of the Adults with Incapacity Act, page 4) when you are deciding whether an intervention order or guardianship would help the person with dementia. It might be necessary because there is no-one with the appropriate powers to take an action or decision or to oversee her affairs. In some cases, someone may apply because of concerns about how well the person’s attorney or withdrawer is managing her affairs. It is a good idea to consult the local authority or Mental Welfare Commission about applying for intervention orders or guardianship relating to personal welfare, and the Public Guardian about those relating to property or financial affairs.
What to do if you need more powers

How to apply

You can use a solicitor to do the application or you can do it yourself. The Scottish Government have prepared a pack which provides a lot of very useful information including guidance, forms and sample applications. It is available on their website or by post – see Further reading, Volume 2, page 60.

It is a good idea to discuss your plans with the social work department at an early stage, as their support will be vital. It may be that the need for guardianship or other form of intervention has arisen from an assessment or review of the needs of the person with dementia. The Act requires a Mental Health Officer from the local authority to make a report for the sheriff on your suitability to be a guardian. They will ask you about yourself, your circumstances and your relationship with the person with dementia.

You apply to the sheriff. Your application must include two medical reports which are no more than 30 days old, one of which, in the case of people with dementia, must be from a doctor experienced in mental disorder. The other will usually be from the person’s GP. These reports are about the person’s incapacity in relation to the decision-making powers you are seeking. The sheriff has the discretion to accept medical reports which are more than 30 days old in certain exceptional circumstances.

As mentioned above, in applying for welfare guardianship or joint welfare and financial guardianship, you will also need a report from a Mental Health Officer from the local authority. An application for financial guardianship only requires a report from someone who knows you well and is able to vouch that you are a suitable person (this can be another family member, friend or someone with a financial background).

Normally, the person with dementia will be notified of the application by the court. In very rare circumstances this may be harmful and, if so, you will need two medical reports to provide evidence that there would be a high risk to the person’s health if she was notified.

The sheriff can appoint an interim guardian for up to three months while a full guardianship application is being considered.

It is normal for a guardian to be appointed for a period of three years and then guardianship renewed as necessary. However the sheriff can use his or her discretion. For example, where it is clear that the adult is likely to deteriorate, the sheriff may agree to an open-ended appointment.

If the order covers property or financial affairs, you may have to take out special insurance called ‘caution’ (pronounced ‘kay-shun’) to protect the person’s assets in case something goes wrong. The Office of the Public Guardian has information on a small number of insurance companies who can provide this type of insurance. See Further help, Volume 2, page 56.

All the forms for applications are available on the Scottish Government’s Adults with Incapacity Act website (see Further reading, Volume 2, page 60).
What to do if you need more powers

Application Costs
The costs of applying for guardianship or an intervention order are:

- a fee to the court for the application (approximately £75)
- fees to the two doctors for reports on incapacity (there is no recommended fee level. Some doctors have been known to waive the fee but you should check their charging policy in advance).
- possibly a fee for the third report if it’s from a professional such as an accountant or lawyer (about £150)
- possibly a solicitor’s fee (you can use a solicitor to help you apply, although this is not essential; if you do, ask about the likely cost before you go ahead); costs are likely to range between £750 to £2,000, depending on the complexity of the case
- registering the order with the Public Guardian (currently £70)
- for guardians with financial powers, there are additional fees to the Office of the Public Guardian for approval of the inventory and management plan which are on a sliding scale depending on the size of the estate, excluding heritable property. Details are available on the OPG website at www.publicguardian-scotland.gov.uk. Costs range from £45 (for an estate up to £30,000) to £1,000 (for an estate of £500,001 and over). If the person’s estate is less than £16,000 (disregarding the house if she still lives there) or she is in receipt of certain benefits, you can apply for exemption from the fees normally charged for approving the inventory and management plan
- the cost of the insurance premiums for caution which will be on a sliding scale depending on the size of the estate. This is an annual fee and often lay guardians have higher premiums than those which would be paid by, for example, a firm of solicitors. The sheriff now has the discretion to dispense with caution where appropriate and to allow other forms of security to be accepted by the Public Guardian.

Who pays?
As the applicant, initially you will pay for the medical reports and solicitor’s fees leading up to the point at which the application is submitted to the sheriff. You may be eligible for Legal Aid ‘Advice and Assistance’, based on the person’s assets, not your own, but the income threshold is very low.

Advice and Assistance allows a solicitor to give you initial legal advice regarding your rights and legal duties, such as how to go about being appointed as a guardian or intervener. It also can help you with making an application for Legal Aid if you want to take forward a guardianship application. Advice and Assistance does not allow a solicitor to raise, conduct or defend a court action on your behalf.

Legal Aid
There is now free entitlement to legal aid for all applications for welfare guardianship or for a mix of welfare and financial powers - there is no means-test – but you do need a solicitor who is willing to deal with legal aid cases. If the application is only for financial guardianship, the income and capital of the person with dementia will be taken into account.
What to do if you need more powers

After the application has been submitted to the sheriff, the fees can come from the person with dementia’s estate (but you must ask the sheriff to authorise this at the time of making the application), or from legal aid if the adult qualifies. You apply for legal aid on the basis of the income and capital of the person with dementia, not your own financial situation. Legal aid, if granted, would cover the fees of the solicitor, the court and the doctors providing reports.

Solicitors who provide civil legal aid have to be registered with the Scottish Legal Aid Board (SLAB). SLAB maintains a register of relevant firms which can be accessed via their website or you can contact them by email, phone or letter. (see Further help, Volume 2, page 56)

If the local authority applies, it can claim the costs from the person’s estate for financial guardianship but usually not for welfare guardianship. For combined applications the sheriff will decide what the local authority can claim. Financial interveners must request payment for any reasonable costs from the Court in their original application.

Expenses incurred by a family member or friend who has been appointed welfare guardian are not normally granted by the sheriff unless there are exceptional circumstances. You would need to make a claim for expenses to be considered at the time of making the application.

Once a financial guardianship is in operation, there is an annual fee to the Public Guardian, and there is also a scale of fees which the guardian can be paid from the person’s estate, depending on the value of the estate. Guardians such as friends or relatives may choose not to claim payment.

What happens next
The sheriff will consider the suitability of the person applying to be intervener or guardian, taking into account ease of access to the adult, ability to manage care and or financial matters, and any conflict of interests. Guardians are intended to be actively involved with the person, so someone who lives a long way away and visits only occasionally, for example, might not be appropriate. For guardianship applications, the sheriff will also consider the ability of the individual to be guardian, any likely conflict of interest, and any adverse effects which the appointment of the individual would have on the interests of the person with dementia. He or she will also consider any undue concentration of power which is likely to arise over the person with dementia, although this does not mean that someone who is the person’s primary carer or a close relative cannot also be her guardian.

The sheriff has the option of granting an intervention order instead of guardianship if he or she considers this sufficient.
What to do if you need more powers

If the sheriff approves the intervention order or guardianship, the court will notify the Public Guardian, who will register it and will notify the person concerned and the local authority. If the order includes welfare powers, the Public Guardian will also notify the Mental Welfare Commission. The sheriff can order that you are supervised by the local authority, for example, if you might need some support in exercising your powers, or if there is a potential conflict of interest.

If you become an intervener or guardian, you must keep records of what you do on behalf of the person with dementia, and you must inform the Public Guardian of any change of address by you or the person with dementia.

There are special safeguards in the Act covering buying or selling the person’s house. In particular, the Public Guardian has to agree that the proposed price is reasonable.

Ongoing costs
As part of the supervision process, financial guardians are required to submit an account or a statement of their transactions with the person’s estate to the Public Guardian. The Public Guardian charges fees for auditing these accounts on a sliding scale depending on the size of the estate, from £65 for an estate valued at £30,000 or under, to £2,335 for an estate valued at over £2 million.

There are also fees payable for the final audit of accounts on a sliding scale from £125 for an estate of £30,000 or under, to £2,395 for an estate of over £2 million. If the person’s estate is less than £16,000 (disregarding the house if she still lives there) or she is in receipt of certain benefits, you can apply for exemption from the fee normally charged for auditing accounts.

Caution will have to be renewed annually unless the sheriff has dispensed with the need for it.

Being a guardian
The emphasis of guardianship is on person-centred planning and flexibility. Get a copy of the Scottish Government code of practice for guardians (see Further reading, Volume 2, page 60). You must apply the principles of the Act (see Principles of the Adults with Incapacity Act, page 4) to everything you do as guardian.

The Public Guardian supervises financial guardians and the local authority supervises welfare guardians. If you have joint welfare and financial guardianship you will be supervised by both bodies. The Act requires the local authority to visit all welfare guardians and adults with a welfare guardian within the first three months from the time of appointment, then twice a year after that. The Mental Welfare Commission monitors welfare guardianship and may visit in exceptional cases.

Financial guardians can be reimbursed for their expenses from the adult’s estate, and may also be paid for undertaking their duties as a guardian if the sheriff agrees. For example, where a solicitor is a guardian with financial powers, he or she may be paid a fee for the work. The Public Guardian will set the amount. Welfare guardians will only be paid where the case has been made to the sheriff and expenses granted.
What to do if you need more powers

If something goes wrong
Financial guardians and interveners with financial powers are supervised by the Public Guardian. The Public Guardian will check the accounts regularly and can investigate any complaint.

Anyone who is worried about how a welfare guardian or intervener exercises his or her powers can complain to the local authority. If they refuse to investigate or the investigation is inadequate, the Mental Welfare Commission can investigate. The Commission can also initiate an investigation themselves. If necessary, the case can be referred to the sheriff. The sheriff has the power to require a guardian to report to the local authority; remove a guardian; or replace him or her with a joint or substitute guardian.

Local authority and individual responsibilities
The Scottish Government has provided a Code of Practice and Guidance to local authorities on their duties in relation to adults who lack capacity to make some or all decisions for themselves, and have complex needs. It is important that carers seek a formal assessment of needs of the person with dementia, who may no longer be able to consent to major welfare and/or financial decisions. A case conference or review will consider what legal measures, if any, are needed to give authority for someone else to act on behalf of the person. People with dementia have their rights protected under the Adults with Incapacity (Scotland) Act 2000, and under the Social Work (Scotland) Act 1968.

The involvement of an independent advocate to support the person with dementia is important if a conflict of interests arises, as may happen between the different parties involved: the person with dementia and family members, between different family members, or between family and the local authority. For further details see the Code of Practice for Local Authorities Exercising Functions under the 2000 Act. See Further reading, Volume 2, page 60.

If the person is unable to consent to community care services which she has been assessed as needing, and there is no proxy with welfare decision-making powers, the local authority may be able to use its powers to provide the services needed. The best way of deciding what will benefit the person most may be through holding a case conference involving carers, professionals, and as much as possible, the person with dementia and her advocate if there is one. Decisions on personal welfare are often a delicate balance between the wishes and rights of the person with dementia and her carer, and professional assessments.

If the person with dementia resists or refuses care, for example, to open the door to care workers or move to a care home, then it will be necessary to apply for a welfare guardianship order. You may wish to do this yourself and become the welfare guardian. But if you are unable to do so, and there is no one else in the family or amongst friends who is willing and able, then the local authority has a duty to apply. In circumstances like this where someone is refusing care, she could be putting herself at risk of serious harm and the local authority may consider applying to the sheriff under the Adult Support and Protection Act to be authorised to gain access to the property to protect the adult.
Acknowledgements
Grateful thanks to Jan Killeen and Jim Pearson for their help in compiling and checking this information and to Dianne Howieson, Elaine Harley and Andy Paul for comments on earlier drafts.

Editor: Maureen Thom
This guide is for people with early stage dementia and for people helping or caring for someone with dementia at any stage of the illness. It will assist you in sorting out day-to-day money matters and it suggests arrangements for the future. It will address many common questions, including:

- How can a financial or welfare power of attorney help?
- How can I access money in my relative’s account to pay their bills?
- What benefits can we apply for?
- What will happen to my house if I go into a care home?
- What help is there to pay for care home fees?
- Does my relative need a guardian?

£5.00 including post and packing
(single copies free to carers and people with dementia in Scotland)
ISBN 978-0-948897-57-3 (Volume 1)
ISBN 978-0-948897-61-0 (Volume 2)
Visit our website at
www.alzscot.org