



Information for doctors who have been asked to provide a capacity report

1

What is the Office of the Public Guardian?

The Office of the Public Guardian (OPG) is part of the Scottish Courts and Tribunals Service and was brought into being by the Adults with Incapacity (Scotland) Act 2000 (the Act). The Public Guardian has a number of functions including registering powers of attorney and court orders for managing the affairs of adults with incapacity, and if ordered by the Sheriff, supervising those with powers over financial matters. The Public Guardian also has an investigative function.

2

What is the Investigation Team?

When the Public Guardian receives a concern relating to the possible risk to property and/or financial affairs misuse or abuse of the funds of an adult with incapacity, there is a statutory obligation to investigate. All investigations are carried out by the Investigation Team. The team is managed by the investigation manager and is split into 3 teams, each led by an investigation officer.

The Public Guardian is an impartial body who does not act on behalf of any other organisation. The Investigation Team is impartial and does not represent or act on behalf of any party. Any information gathered during the course of an investigation is kept confidential and is not disclosed other than in accordance with the provisions of “the Act”.

3

Why have the Investigation Team contacted me?

A concern has been raised relating to one of your patients. In order to have legal authority to investigate this concern, we need to establish whether or not your patient has the capacity to manage their own property and/or financial affairs, or whether they may be capable of making informed decisions and acting on those decisions about how their affairs are managed by others in order to safeguard their own interests. The request is made entirely independent of any application for guardianship under section 57 or for medical treatment under section 47 of “the Act”.

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What does the Investigation Team need from me?

The Investigation Team need you to complete the [capacity/incapacity report](#) that we sent you which clearly indicates your view of the patient's capacity (which is defined under "the Act" as set out below) to manage their property and /or financial affairs. This will include having the capacity to make informed financial decisions regarding their affairs or supervising those whom they have appointed to do that for them. This includes being able to act on decisions they take in order to safeguard their own financial interests.

"The Act" defines incapacity as incapable of:

- acting; or
- making decisions; or
- communicating decisions; or
- understanding decisions; or
- retaining the memory of decisions

by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretive nature or otherwise).

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Is the information I provide you with kept confidential?

Yes. All information ingathered during an investigation is treated with the utmost confidentiality. Any information we receive from you will not be disclosed to any third parties other than where required to do so by law. Should a third party, including the adult concerned request sight or a copy of your view, your permission will be sought prior to release.

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My knowledge of the patient you have enquired about is limited. Do I still need to complete the report?

Yes. We understand that some patients may be new or not well known to their medical practice, however, our need for a view on capacity remains. Our request may present an opportunity to meet and assess a patient, but if you feel you are not able to assess your patient, we would ask that you please consult the adult's carer(s), or others who know the adult well, including other health or social care practitioners if relevant. If you refer the adult to a specialist for the assessment to be carried out, it would be helpful if you would advise us of that referral for our records.

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Do I have to seek authorisation from my patient or their attorney before completing the report?

It is not for the Public Guardian to direct how you progress your assessment of your patient's capacity. Should you consider your patient to be capable then it would seem entirely appropriate that they provide you with consent to supplying the report.

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Having examined my patient, I feel I cannot provide a definitive view on capacity. What next?

We understand that some patients may have fluctuating or limited capacity in terms of managing or making decisions on their finances. We would ask that you keep in mind that we are asking only for a view on your patient's ability to make decisions and to act on those decisions to safeguard all aspects of their own property and/or finances.

Without a clear view on capacity we may not be able to investigate or intervene to safeguard the interests of an adult whose property and/or financial affairs may well be at risk. Perhaps a referral to a specialist may help. You may find the ['Communication and Assessing Capacity - A guide for social work and health care staff'](#) published by the Scottish Government useful.

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I have completed and returned the capacity/incapacity report – may I charge for this?

The Public Guardian needs your view in order to carry out the statutory obligation to investigate a concern into the financial affairs of an adult with incapacity. The Public Guardian's investigation does not incur a fee and accordingly we do not anticipate a charge for your completing the report. However, should the completion of the report involve unreasonable time and expense, then the Public Guardian will meet any realistic costs invoiced in line with BMA guidelines. Invoices may be sent to the investigation team at the address below.

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If I have any queries, concerns or feedback regarding the guidance offered who should I contact?

Investigation Team
Office of the Public Guardian (Scotland)
Hadrian House
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

- Telephone: 01324 678300
- Fax: 01324 678301
- E-Mail: POA-INV@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk
- Opening hours: 09.00 -17.00 Mondays to Fridays

If visiting the office, to be sure of seeing a relevant member of staff, it is preferable to make an appointment.