

Legal Aid and Guardianship - Scottish Government proposed changes - what parent carers need to know.

The Scottish Government are currently proposing drastic changes to the Legal Aid system regarding how solicitors are paid for Guardianship work carried out under the Adults with Incapacity (Scotland) Act 2000.

Guardianship is a court order designed to give family members powers required to act on behalf of younger adults who are turning 16 and are unlikely to be able to make decisions for themselves going into adulthood.

Currently there is a modest number of Scottish Solicitors who offer Legal Aid for this type of work. This means that some, if not all, of the initial “out of court” work required may be covered under Legal Aid and the actual “in court” work itself - which can cost from £4,000 upwards - is non-means tested so it is always covered by those who work with Legal Aid.

Under the proposed changes however it is likely that most, if not all, solicitors in Scotland will be unable to offer large areas of this work under the Legal Aid scheme. This will mean that the fees will have to be paid privately by the funds belonging to the Adult with Incapacity personally if they wish to obtain Financial Guardianship powers i.e. where they own their own homes or have access to other funds e.g. savings etc.

But what if the Adult can't pay? Well, the burden may fall on their family but what if their family can't pay? Usually, in those circumstances, the local authority may step in to apply for Guardianship which means important decisions for the Adult may be taken away from the family members and placed in the hands of social work.

So what are the proposed changes which will, if successful, make it almost impossible for solicitors to cover large areas of this type of work under Legal Aid? At the moment solicitors are paid detailed fees by the Scottish Legal Aid Board which cover all of the work that is carried out at the application stage and also the “in court work” which can vary from case to case. The proposal is to move to fixed fees which do not take into consideration many aspects of the work required. There are, of course, some publicly funded Law Centres, however, they will be overwhelmed with cases and unlikely to have the resources to cover all of the hearings required.

Wider implications are equally worrying such as, increased waiting times for the allocation of social workers to address Guardianship - 2.5 years in some areas - and issues relating to those trying to apply for particular aspects of Self Directed Support, which are not possible without Financial Guardianship powers.

We, along with our colleagues in the legal sector and The Law Society of Scotland, have submitted our full responses to the initial consultation and on 2nd of December 2025 the Minister for Victims and Community Safety, Siobhian Brown MSP, announced the Scottish Government would pause the proposed changes to Legal Aid for Adults with Incapacity cases.

The Minister said: “Following careful consideration of stakeholder feedback, I have taken the decision to pause the proposal for Civil regulations that sought to replace detailed fees with block

fees for Adults with Incapacity (AWI) cases. Listening to stakeholders and acting on their views is essential if we are to deliver Legal Aid reform that works”

Clearly reform is on the way in some shape or form and we would therefore urge anyone who has been putting off applying for Guardianship for their Adult child to make a start on the process now.

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