

Discharging Adults with Incapacity

A practical guide for health & social care practitioners involved in discharge planning from hospital.



HEALTH AND SOCIAL CARE
SCOTLAND





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About Us

Health & Social Care Integration Division is part of the Scottish Government, and is responsible for overseeing the integration of health and social care services across Scotland.

Integration is the most significant change to health and social care services in Scotland since the creation of the NHS in 1948. With a greater emphasis on joining up services and focusing on anticipatory and preventative care, integration aims to improve care and support for people who use services, their carers and their families.

Contact Us



HSCI, Scottish Government, GE.19 St Andrews House, Edinburgh EH1 3DG.



HSCIntegration@gov.scot



www.gov.scot/Topics/Health/Policy/Health-Social-Care-Integration



@HSCIntegration



<https://blogs.gov.scot/health-social-care-integration/>

About the guides

This is one of a range of good practice guides focusing on the various aspects of discharge planning for patients with ongoing health & social care needs after discharge.

This guide includes a range of practical hints, tips and useful resources from a range of sources including good practice examples from the Edinburgh Health and Social Care partnership 2016 pilot and Aberdeen City's MHO capacity project (see Annex B).

Health & Social Care practitioners may wish to use or adapt all or part of this guide to make local improvements. However, the guide does not aim to override any existing local good practice already in place.

Feedback and Good Practice

You can also submit your comments, questions and examples of good practice using our [Feedback Form](#).



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Discharging Adults with Incapacity





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The Adults with Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000 ('the Act') introduced a system for safeguarding the welfare and managing the finances and property of adults (age 16 and over) who lack capacity to act or make some or all decisions for themselves because of mental disorder or inability to communicate due to a physical condition. It allows other people to make decisions on behalf of these adults, subject to safeguards. The main groups affected include people with dementia, people with a learning disability, people with an acquired brain injury or severe and chronic mental illness, and people with a severe sensory impairment.

The Act aims to ensure that solutions focus on the needs of the individual: for example, a person with dementia may be able to decide what sort of support he/she would prefer to help with day to day living, but be unable to manage his/her money. In such a case a financial intervention may be all that is needed. In other circumstances welfare alone, or a combination of welfare and financial measures may be necessary.

RESOURCES

The Adults with Incapacity (Scotland) Act 2000



Short Guide to the Adults with Incapacity Act



Codes of Practice for people authorised under the 2000 Act

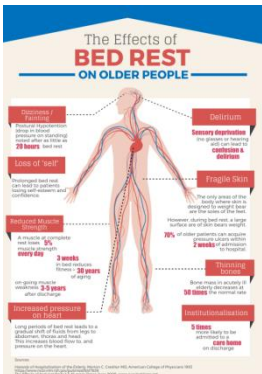




Why do we need this guide?

The discharge of patients who may lack capacity can be complicated and lengthy, leading to unnecessary delays in hospital. Monthly delayed discharge census data shows that around 200 patients are delayed every month due to the need for Adults with Incapacity (AWI) procedures, some of whom have been delayed for several weeks or months.

Why can't people stay in hospital?



A person is not entitled to remain indefinitely in hospital once they are ready for discharge. Integration Authorities should take robust action to ensure that people are not inappropriately delayed in hospital if care, appropriate to their needs, is available in the community.

Health and Social care staff should work with the patient, family and carers to assess the person's long-term needs following discharge, and provide appropriate services to meet those needs. People do not have the right to choose to stay in hospital, where this goes against best clinical practice.

There is clear evidence that an unnecessary, prolonged stay in hospital can be detrimental to a person's physical and mental wellbeing.

- For patients over 80, a week in bed can lead to 10 years of muscle ageing, 1.5 kg of muscle loss, and a 10% loss of aerobic capacity, and may lead to increased dependency and demotivation.
- Almost 50% increase in chance of needing help with activities of daily living one month after discharge.
- On-going muscle weakness 3 – 5 years after discharge.
- Five times more likely to be admitted to a care home on discharge.
- A sense of disconnection from family, friends and usual social network leading to boredom, loneliness, hopelessness, confusion and depression.
- Increased susceptibility to hospital associated infection and a higher risk of delirium, malnutrition, pressure sores and falls.

3 weeks
bed rest is
equivalent
to 30 years
of ageing

70 percent of older patients can acquire pressure ulcers within 2 weeks of a hospital admission



Top tips



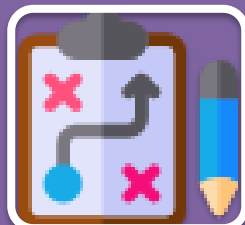
Start Early

- Work to identify AWIs should start as soon as possible after admission
- Pass cases to 'allocated casemanager' to oversee process and ensure consistency throughout
- Early referral to an MHO can also reduce the risk of delay



Use the least restrictive options wherever possible

- Take a supportive decision approach to fully involve patient & carer
- Use S13za or existing PoA to facilitate discharge



Run parallel processes

- Ensure discharge planning continues during the Guardianship application process
- Don't 'park' cases until Guardianship is granted



Consider applying for an interim order

- Some areas have been successful in gaining an Interim Order from the Sheriff
- A care placement must be identified before an interim order would be granted



Teamwork

- Build good relationships with hospital teams
- Good communication, awareness raising and training will improve processes and ensure appropriate and timely referrals



Identifying and Assessing Adults with Incapacity

Identifying

- ❑ **Identify** and support patients who may lack capacity, and their carers **as early as possible and practical** in the patient's journey. This not only helps prevent potential delay at discharge, but is good practice in terms of involving patients and carers in the discharge planning process.
- ❑ Think Delirium. Often elderly patients can develop delirium through their illness, surgery or medications. It often starts suddenly, but usually lifts when the condition causing it gets better. It can be frightening – not only for the person who is unwell – but also for those around them.

A range of resources are available to help support staff and enhance their knowledge and understanding of delirium. See the resources box below for more information and links.

Assessing

- ❑ Assign an appropriately trained member of staff, such as a care manager or other member of the community or discharge team to act as **Case Manager**.
- ❑ The **Case Manager** should meet with the adult and carer or representative as soon as possible and appropriate in the patient's hospital stay to discuss long-term care needs.
- ❑ The **Case Manager**, in consultation with other member of the MDT, should form a preliminary view about the capacity of the adult to give consent to the proposed care plan during these initial discussions.
- ❑ If any concerns regarding capacity are raised then the patient should be referred onto an appropriate clinician for a formal assessment of capacity.
- ❑ The potential for using S13za of the 1968 Act should also be considered at this stage.

The **principles** of the **Adults with Incapacity Act** should always be **taken into account** during any discussions about what future steps should be taken.

The General Medical Council has developed a range of resources to assist clinical staff assess and communicate with patients who may lack capacity. Resources include detailed guidance, case studies and an online interactive decision support tool. The GMC confirm their guidance is compatible with Scottish Legislation. See resources box, below.



RESOURCES

Delirium Learning Resources

NHS Education for Scotland developed two learning modules - An Introduction to Delirium and Delirium: Prevention, Management and Support. These are available through learnpro and mobile apps for iOS and Android devices.



Think Delirium Toolkit

NHS Education for Scotland, in association with the Scottish Delirium Association and NHS Scotland developed the **delirium toolkit** which includes a range of tools and **resources** to help identify patients with delirium.



Decision Support Toolkit

The General Medical Council has developed **guidance** and an interactive **Decision Support Tool**, available on the GMC website and through the GMC CPD App for Android and iOS devices.



Think Capacity Think Consent

This **learning resource** provides essential information about the application of Part 5 of the Adults with Incapacity (Scotland) Act 2000 (AWI) to ensure staff in acute general hospital settings safeguard the rights of people who lack capacity to consent to treatment.



NICE Guidelines

Delirium diagnosis, prevention and management. July 2010.





Key Actions:

- ☐ assess any **risks** and needs in relation to financial management arrangements,
- ☐ **establish** whether anyone already **holds proxy decision making powers** (Welfare or continuing power of attorney)
- ☐ Where a proxy is in place, **obtain a copy of the registered document and establish the powers granted**, and whether any trigger for use of the powers has been met,
- ☐ Take copies of documentation for retention in social work and care provider files.
- ☐ Establish whether the individual, with appropriate support, could have capacity to appoint a Power of Attorney
- ☐ Establish if anyone has made, or is willing to make, an application for welfare powers

If no-one holds, or has made an application for, relevant proxy decision making powers the allocated worker will request that a formal assessment of the adult's capacity **in relation to the proposed care plan**, is made by a suitably experienced healthcare professional. If the adult is known to psychiatric or learning disability services, this will usually be the consultant psychiatrist. The assessment should be provided in writing.

Decision Making & Choice

Where the **adult lacks capacity to make decisions about their care plan**, a multi-disciplinary decision making meeting should be held to **consider the proposed care and seek the views of all relevant parties**. This meeting should **include** the involvement of the **allocated MHO**. It could be incorporated into existing discharge planning/family meetings and should be part of the standard multi-disciplinary assessment process.

If the meeting indicates that the adult lacks capacity and the adult, or another relevant party, is **not agreeable** to the care plan then an application for **Guardianship should be pursued** either by the family or local authority.

The following aspects should be discussed and documented at the case conference:

- ☐ All risks should be identified, evidence and significant incidents noted
- ☐ Ways of managing risks should be considered and a record made of decisions taken
- ☐ Are the principles set out in the Act satisfied?
- ☐ Is a Power of Attorney in place?
- ☐ Capacity is decision specific. Does the adult have capacity to agree to the specific care choices being made?
- ☐ Can discharge be progressed using Section 13ZA of the 1968 Act?
- ☐ Are grounds met for a Guardianship Order?
- ☐ Will a relative/carer apply for the Order. If not, the Council has a duty to apply.



The minute of the case conference must clearly record the decisions whether to make the application and the reasons for the decision. Decisions from this meeting should be recorded on the '[Record of Views and Decisions](#)' form.

Supported Decision Making




The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) expects all signatories (including the UK) to 'take appropriate steps to provide access by persons with disabilities to the support they may require in exercising their legal capacity'.

The Mental Welfare Commission describes supported decision making as 'any process in which an individual is provided with as much support as they need in order for them to be able to:

1. Make decisions for themselves; and/or
2. Express their will and preferences within the context of substitute decision making (for example, guardianship, or compulsory treatment order for mental disorder).

In both cases the purpose of supported decision making is to ensure that the individual's will and preferences are central to and fully respected in decisions that concern them.

Adults who lack capacity should be given the maximum support to assist with decision making, including:

-  seeking guidance from speech and language therapy on communication needs,
-  utilizing Independent Advocacy,
-  developing informal circles of support.

Choosing a Care Home

Guidance on choosing a care home on discharge from hospital was published in December 2013.

It provides detailed advice on managing choice of care homes for people assessed as requiring on-going long-term care in a care home following a hospital stay.

The choice guidance should be referred to for further guidance on discharge planning and supporting people through the process of choosing a care home. To ensure the minimum of delay, it is vital that social care staff work with the patient and family to choose a suitable care home, whilst the application for Guardianship is being pursued.

Using 13za of the Social Work (Scotland) Act 1968

The Adult Support and Protection (Scotland) Act 2007 introduced an amendment to the Social Work (Scotland) Act 1968 to enable local authorities to provide services to adults who have been assessed as needing a service, but who lack the capacity to consent to receiving that service.

Section 13ZA makes it explicit that where a local authority has, following an assessment of the adult's needs, concluded that the adult requires a community care service, but the adult is not capable of



making decisions about the service, they may take any steps they consider necessary to help the adult benefit from that service.







The following features have been identified as being sufficient to allow a local authority to move an adult to a care home, or make other significant changes to care arrangements, under the powers of the 1968 Act:

- ❑ There is no proxy with relevant authority and there is no application for an order under the 2000 Act with relevant powers in the process of being determined; and
- ❑ The risk assessment indicates that there are no issues that would warrant an order under the 2000 Act; and
- ❑ It is considered that the adult will not be deprived of their liberty under Article 5 of the European Convention of Human Rights; and
- ❑ There would be no other benefit to the adult in applying for an order.

In addition to these features, essential indicators that a care intervention under S13ZA of the 1968 Act may be appropriate would be:

- ❑ The person does not indicate disagreement with the proposed action, either verbally or through their behavior / actions, and it appears that the adult is likely to accept the care arrangements;
- ❑ All interested parties, including professionals and the adult's family/carer agree with the care intervention proposed.



| | |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Record of View and Decisions form |  Form |
| MWC Guide to Supportive Decision Making |  Guide |
| MWC Guide to using S13za |  Guide |
| Scottish Government guidance on using 13za |  Guidance |
| Communication and Assessing Capacity: A guide for social work and health care staff |  Guide |
| Guidance on choosing a care home on discharge from hospital |  Guidance |

Tracking private applications/Case Management

Proactive case management is essential to ensuring private Guardianship applications are processed without unnecessary delay.

- ☐ Agree clear, realistic timescales with the applicant for progressing key milestones within the process.
- ☐ Signpost families to solicitors with a knowledge in AWI casework. This could involve providing a list of local solicitors, or directing to the search facility on the SLAB website. [DN: include link in useful resources]
- ☐ Case manager [DN: who is this] should support family throughout the application process.
- ☐ Provide a point of contact for families to liaise with, seek advice and support, if required.
- ☐ Establish an escalation process for cases that are not progressing within a reasonable timescale.
- ☐ Use a database to track cases and monitor progress. Link to example.






Supporting & Signposting

The applicant should be given a support and signposting to help identify a suitable solicitor within a reasonable timescale. Once a solicitor has been appointed the family should notify the Case Manager.

Once notified, the Case Manager should contact the solicitor to advise of their involvement in the case and agree timescales for completion of the application process.

Applications for Welfare Guardianship may be eligible for Legal Aid and it is vital that the applicant understands this and appoints a solicitor who can apply for this. The SLAB website also has a search facility to find local solicitors who provide legal aid for AWI works.

| | |
|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Scottish Legal Aid Board solicitor finder |  Search |
| Legal Aid leaflet |  Leaflet |
| Supporting relatives & informal carers - top tips for mental health workers |  Guide |



Annex A: Principles of the Adults with Incapacity Act

Principle 1 - Benefit

Any action or decision taken must benefit the person, and only be taken when that benefit cannot reasonably be achieved without it.

Principle 2 - Least restrictive option

Any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.

Principle 3 - Take account of the wishes of the person

In deciding if an action or decision is to be made, and what that should be, account must be taken of the present and past wishes and feelings of the person, as far as these may be ascertained.

Some adults will be able to express their wishes and feelings clearly, although they would not be capable of taking the action or decision which you are considering. For example, they may continue to have opinions about a particular item of household expenditure without being able to carry out the transaction personally.

The person must be offered help to communicate their views. This might mean using memory aids, pictures, non-verbal communication, advice from a speech and language therapist or support from an independent advocate.

Principle 4 - Consultation with relevant others

Take account of the views of others with an interest in the person's welfare. The Act lists those who should be consulted whenever practicable and reasonable. It includes the person's primary carer, nearest relative, [named person](#), [attorney](#) or [guardian](#) (if there is one).

Principle 5 - Encourage the person to use existing skills and develop new skills

Encouraging and allowing the adult to make their own decisions and manage their own affairs as much as possible and to develop the skills needed to do so.

Supervision and regulation

Under the Act four public bodies are involved in the regulation and supervision of those authorised to make decisions on behalf of a person with incapacity. These are: the Office of the Public Guardian (Scotland), the Mental Welfare Commission for Scotland, the courts and local authorities.



Annex B: Good Practice Examples



We are keen to hear about any good practice around discharging adults with incapacity. If you have an example you would like to share please use our [online form](#).

Edinburgh Health and Social Care Partnership Pilot

In April 2016 City of Edinburgh Council, NHS Lothian and Scottish Government developed a pilot aimed at reducing the numbers and length of stay of patients going through the Guardianship process. Joint funding from the Scottish Government and NHS Lothian enabled the Edinburgh Partnership to appoint two Mental Health Officer (MHO) to focus on AWI delayed discharges.

It was recognised that there are significant delays in discharge planning for patients admitted to acute beds who lack capacity to make decisions about future care. There were a number of reasons thought to be behind the delays in the guardianship process:

- 👎 Late identification of adults who may lack capacity
- 👎 Lack of monitoring of private applications
- 👎 Poor understanding of the application process and implications of becoming a Guardian
- 👎 MHO capacity to carry out assessments and provide reports

Keys to Success

- 👍 **Delays reduced as MHO allocated at the point of referral.** Referrals were made directly to the AWI pilot prior to case conference and the work allocated immediately. The MHO did not change, providing consistency throughout the process.
- 👍 **Least restrictive options used wherever possible.** A focus on supported decision making and robust risk management allowed use of S13za or existing Power of Attorney's to facilitate discharge.
- 👍 **Improved Patient Pathway.** The pathway has more challenges than simply waiting on an MHO. Social work assessments and planning for discharge would wait until guardianship had been granted. These unnecessary delays have been addressed by more joint working and processes running in parallel.
- 👍 **Interim powers sought to facilitate early discharge.** The pilot was successful in securing interim powers to support discharge, where a placement was identified, prior to a full order being granted.
- 👍 **Positive feedback from families.** Families have felt supported and able to manage the process of guardianship without unnecessary delays.
- 👍 **Building good relationships with hospital teams.** Improved relationships with hospital staff led to timely referrals. Awareness raising on the use of all potential AWI interventions was carried out and training needs continue to be identified.

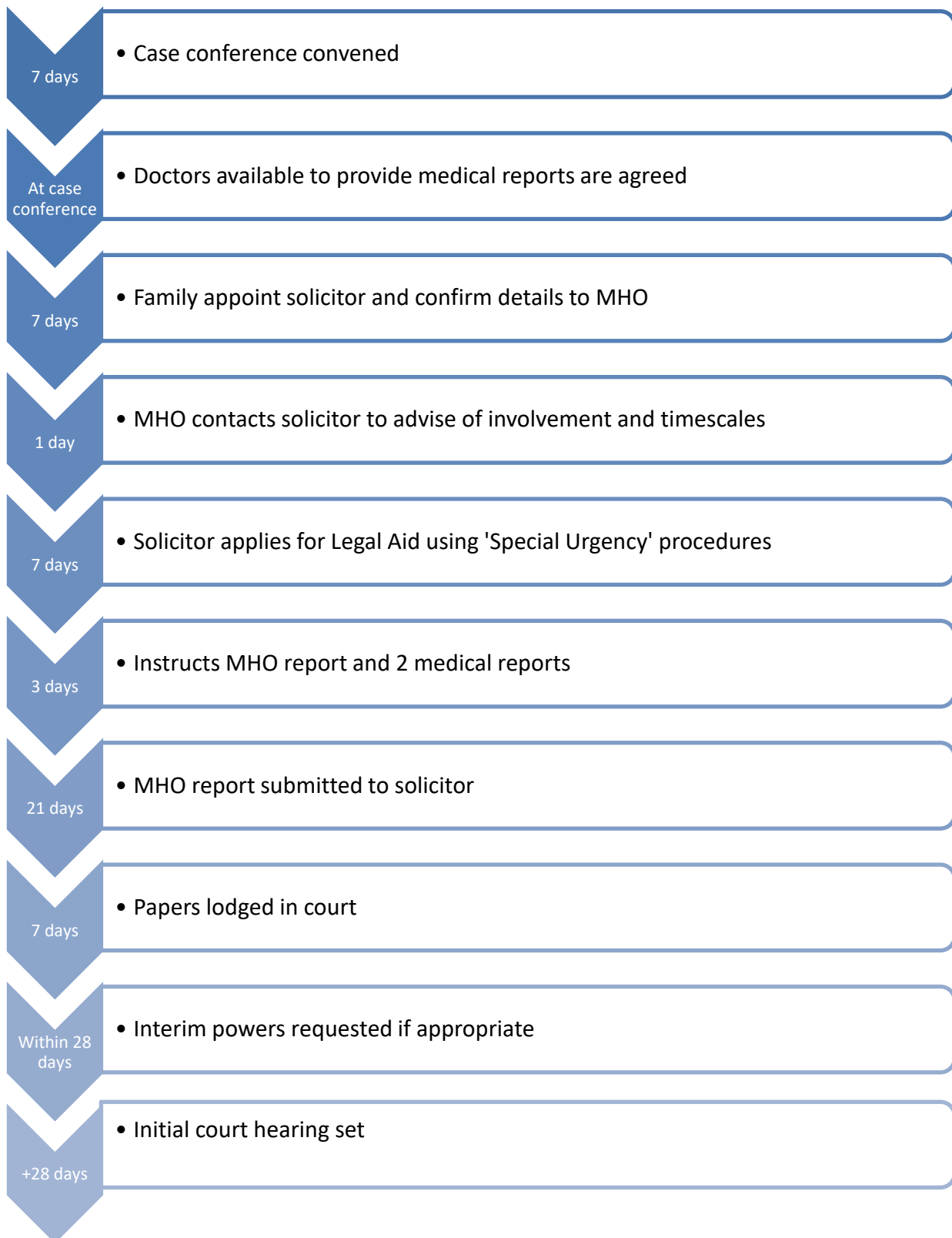
Achievements

- 👍 Total delayed discharged due to guardianship reduced from 28 (April 2016) to 9 (March 2017)
- 👍 Hospital length of stay reduced from 6,993 to 1,654 days
- 👍 Delayed length of stay reduced from 3,605 to 827 days



Key Milestones achieved during Edinburgh pilot

Private Application





Local Authority Application





Aberdeen City Mental Health Officer Capacity Project

In April 2018 a 0.5 FTE dedicated fixed term Mental Health Officer post was put in place to boost the Partnership's capacity to address 'complex' delayed discharges. Similar to the Edinburgh pilot, dedicated MHO post was set up to assist with the early identification of patients who lacked capacity (from the point of admission) and for whom major packages of care/support were required.

61% reduction in bed days lost in 2018, compared to the same periods in 2017

The MHO was also to be a single point of contact that would be able to deliver prompt and effective decision making. Identifying and tackling potential "sticking points" was also something the dedicated MHO would manage.

Quantitative Evaluation

Through the monthly delayed discharge census data the partnership was able to analyse the number of bed days lost that could be directly linked to Adults with Incapacity related activity. Data for the period April 2018 – November 2018 (when the additional MHO capacity was in place) was compared to the same period in the previous two years (when no additional MHO capacity was in place).

The bed days lost labelled using the following delayed discharge code were counted and collated for the time periods outlined:

- Legal/Financial Code 9 51X [Adults With Incapacity Act]

| | April-Nov '17 | April-Nov '18 | + or - | % change |
|--------------------------------|---------------|---------------|--------|---------------|
| Number of Bed Days Lost | 1116 | 434 | -682 | 61% reduction |

| | April-Nov '16 | April-Nov '18 | + or - | % change |
|--------------------------------|---------------|---------------|--------|---------------|
| Number of Bed Days Lost | 1310 | 434 | -876 | 66% reduction |

Potential Savings

The Partnership used a 'lowest bed days cost' of **£279 per bed day** to calculate the efficiencies achieved through the reduction in bed days lost.

£190,278 saved in first 8 months of operation

Applying this figure to the bed days reduction of 682 days gives an indicative saving of £190,278 over the first 8 months of the dedicated MHO being in post. It is expected that these savings will rise during the remainder of the year's trial.



Annex C: Sources

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- The Adults with Incapacity (Scotland) Act 2000 – <https://www.legislation.gov.uk/asp/2000/4/contents>
- Short Guide to the Adults with Incapacity Act – <http://www.gov.scot/Publications/2008/03/25120154/1>
- Code of Practice for people authorised under the 2000 Act – <http://www.gov.scot/Topics/Justice/law/awi/010408awiwebpubs/cop>

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- NES Delirium Learning Resource - http://www.nes.scot.nhs.uk/media/4103657/learnpro_access_guidance_delirium_2016.pdf
 - For iPhones - <https://itunes.apple.com/gb/app/delirium-learning-application/id885814764?mt=8>
 - For Android - <http://play.google.com/store/apps/details?id=com.waracle.delirium>
- Think Delirium
 - Toolkit - [http://www.knowledge.scot.nhs.uk/media/CLT/ResourceUploads/4052733/20141007%20Delirium%20toolkit%20v3.1%20testing%20sep%20\(print\).pdf](http://www.knowledge.scot.nhs.uk/media/CLT/ResourceUploads/4052733/20141007%20Delirium%20toolkit%20v3.1%20testing%20sep%20(print).pdf)
 - Resources - <http://www.knowledge.scot.nhs.uk/improvingcareforolderpeople/think-delirium.aspx>
- GMC Decision support –
 - Guidance – <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/consent>
 - Toolkit - https://www.gmc-uk.org/Mental_Capacity_flowchart/
 - For iOS - <https://itunes.apple.com/gb/app/gmc-my-cpd/id996370543?mt=8>
 - For Android - https://play.google.com/store/apps/details?id=org.gmc_uk.mycpd&hl=en?WT.mc_id=gmcwebsite_image_mycpdapp
- Think Capacity, Think Consent - http://www.nes.scot.nhs.uk/media/1557644/capacity_and_consent-interactive.pdf
- NICE Delirium diagnosis, prevention and management guidelines - <https://www.nice.org.uk/guidance/cg103>

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- Record of Views & Decisions Form – <http://bit.ly/2HjJ6WI>
- MWC Guide to Supportive Decision Making - https://www.mwscot.org.uk/media/348023/mwc_sdm_draft_gp_guide_10_post_board_iw_final.pdf
- MWC Guide to using S13za - <https://www.mwscot.org.uk/good-practice/commission-advice/cheshire-west-guidance/>
- Scottish Government guidance on using 13za - http://www.sehd.scot.nhs.uk/publications/CC2007_05.pdf
- Communication and Assessing Capacity: A guide for social work and health care staff - <http://www.gov.scot/Publications/2008/02/01151101/12>



- Guidance on choosing a care home on discharge from hospital - http://www.sehd.scot.nhs.uk/mels/CEL2013_32.pdf

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- Scottish Legal Aid Board solicitor finder – <https://www.slab.org.uk/public/solicitor-finder/>
- Legal Aid leaflet - <http://bit.ly/2xPSm5J>
- Supporting relatives & informal carers - top tips for mental health workers - http://www.nes.scot.nhs.uk/media/1663797/nes_tip_cards_final.pdf.pdf

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- Good practice submission form - <https://form.jotformeu.com/IslaBisset/good-practice-submission-form>

Images & Icons

Icons and graphics from www.flaticon.com