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# Community Care and Dementia Learning System Event

## Increasing knowledge to improve the uptake of Power of Attorney

Tuesday 13 December 2022  
12:00 – 13:15

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# Welcome

Michelle Miller  
Portfolio Lead  
Community Care and Dementia Portfolio

Enabling health and  
social care improvement



# Agenda

Time	Item	Lead
12:00	Welcome and introductions	Michelle Miller Portfolio Lead Community Care and Dementia Portfolio Healthcare Improvement Scotland
12:05	Everything you always wanted to know about Power of Attorney (and probably more besides)	Jill Carson Consultant Public Policy Alzheimer Scotland
12:50	Innovation in practice – West Lothian case study	Jim Brown Development Worker Carers of West Lothian
13:00	Moderated Q&A panel	All
13:10	Further resources to support practice	Michelle Miller
13:13	Closing remarks and evaluation	Michelle Miller
13:15	Close	



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# Everything you always wanted to know about Power of Attorney (and probably more besides)

Jill Carson

Consultant in Public Policy

Alzheimer Scotland

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# Why is Power of Attorney important?

- » Legislation - Adults with Incapacity (Scotland) Act (2000)
- » No decision making without legal authority:
  - Power of Attorney (proactive, voluntary)
  - Guardianship (retrospective, involuntary)
  - Medical decision-making (emergency; Section 47 certificate)
- » No rights of next of kin (can only be 'consulted')
- » Financial issues (managing money including bills & contracts)
- » Human rights:
  - UN Convention on the Rights of Persons with Disabilities
  - European Convention on Human Rights

# The scale of the problem - Glasgow in 2012



# Why am I still here?

- » Glasgow conference 2013
- » The role of the Responsible Medical Officer
  - Assessment of capacity
- » The Adults with Incapacity (Scotland) Act (2000)
- » Section 13ZA Social Work (Scotland) Act 1968
- » The role of the Chief Social Worker
- » The role of lawyers
- » How does it feel?

# The impact

- People living in hospital when not requiring treatment
- Right to family life
- The courts decide what happens to you

‘Everyone has the right to liberty and security of person.’

(Human Rights Act Article 5)



# If I have Power of Attorney.....

» Are the relevant powers covered?

- Decide medication
- Decide treatment
- Decide who I should see (or not see)
- Decide who can have details of my condition
- Decide where I should live

» *As if it was me making the decision*

# If I don't have Power of Attorney

- » No one can consent on your behalf
- » No legal authority for welfare decisions
- » Medical treatment is covered under the Awl Act through a section 47 certificate
- » RMO has to decide treatment in conjunction with relevant others (family, multidisciplinary team)
- » Where legal authority is required eg admission to a care home where there is deprivation of liberty - need to apply to the courts for appointment of a guardian

# Responsibilities of an Attorney

- » Act within the powers stated
- » Financial and/or welfare
- » Follow the principles of the Act (most benefit, least restrictive)
- » 'Act as if' - rights, will & preferences
- » Advance statement
- » If joint Attorneys - agreement

# Responsibilities of a Guardian

- » Follow the principles of the Act
- » 'Act as if' - rights, will & preferences
- » Formally accountable to the Public Guardian:
  - Inventory
  - Management plan
  - Annual accounts
- » If a Guardian is required and there is no one close willing or able to take on the role - Chief Social Worker

# Legislation & Policy Background

## » Adults with Incapacity (Scotland) Act (2000)

- Capacity is decision specific
- Decisions by a legally appointed representative
- Most benefit/least restrictive

## » ECHR

- Article 5 “no-one shall be deprived of his liberty....”

## » UNCRPD

- Article 12 “...measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body”
- Article 14 “....the existence of a disability shall in no case justify a deprivation of liberty”

# Key legal decisions

## » Bournemouth 2004.

- “de facto’ detained. Is it deprivation of liberty? High Court - no; Court of Appeal - yes; House of Lords - no; ECHR - yes.
- “the health care professionals treating and managing the applicant exercised complete and effective control over his care and movements.....[he is] legally incapable of consenting to, or disagreeing with, the proposed action”

# Key legal decisions (cont.)

- » Cheshire West 2014 (Supreme Court)
  - Further clarification of deprivation of liberty
  - Under continuous supervision and control and not free to leave
  - Compliance is irrelevant
  - Deprivation of liberty applies regardless of setting
  - ‘If to be subjected to total and effective control and shorn of my freedom to leave would be a deprivation of liberty for me, then why should it not be a deprivation of liberty for someone who lacks capacity?’
  - Safeguards

# Two big issues

## » Deprivation of liberty

- Requires legal authority
- Not mentioned in AwI Act

## » The rights, will and preferences of the individual

- No 'best interests' concept
- Supported not substitute decision making



# Barriers to Action

- » Legislation little-known and poorly understood
- » A message about negative life events
- » Convincing people there is a problem in the first place (myths - NoK, too young, already got a will)
- » Cost
- » Legal advice & assistance
- » Lawyers

# The equality challenge

- » More people in affluent areas have a PoA
- » People in low income category are more likely to require a PoA
- » Human rights issue with a financial barrier
- » Cost saving potential to the NHS is huge.....
- » ....but requires funded by each of us individually
- » Who 'owns' the issue? (OPG? Scottish Legal Aid Board? Scottish Government? NHS boards? HSCPs?)

# Helping you to get the message across.....

- » Public awareness campaign
- » Started in Glasgow 2013
- » Enterprise Screen
- » Now across all HSCPs in Scotland

# [mypowerofattorney.org.uk](http://mypowerofattorney.org.uk)



[HOME](#) [IN YOUR AREA](#) [FURTHER INFO](#) [VIDEOS](#) [ABOUT US](#) [NEWS](#) [APPLY NOW](#)



## Get It Sorted

A Power of Attorney is more important than ever: Covid-19 has seen many more people lose capacity, even for a short time. Take your first steps and make your plan today.

[FIND OUT HOW](#) →

[FIND A SOLICITOR](#) 

Make sure your  
voice is heard.

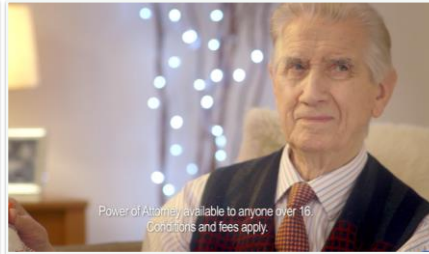
Power of Attorney day.  
Thursday 30th September

[CHECK IF YOU ARE ELIGIBLE FOR  
LEGAL AID](#)



# TV campaigns 2013-2016

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# [mypowerofattorney.org.uk](http://mypowerofattorney.org.uk)

- » **33.3%** increase in Glasgow City registrations 2013-2014, (17.3% rest of Scotland)
- » The mypowerofattorney campaign was responsible for 276 (24%) registrations of the 1,165 registrations in Glasgow City in the first quarter of 2015
- » If all 276 lost capacity and were admitted to hospital, the savings made by avoiding delayed discharge would be in excess of £7m.....
- » ....but if just 2 of the 276 lost capacity and were admitted to hospital, the savings made cover the cost of that campaign

*Levin KA, Carson J, Crighton E. (2017) Measuring the impact of a public awareness campaign to increase Welfare Power of Attorney registrations in Scotland. Age & Ageing 46, 659-664.*

# Your Role

- » Critical
- » Convince people to act
- » Easier if you're convinced yourself!
- » Remember - when loss of capacity applies, the choice is between POA and Guardianship, not between POA and do nothing
- » Anyone can experience loss of capacity; it's just more predictable when you have a disease such as dementia



# Thank you for listening



## Please submit your questions using the Q&A function



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# Innovation in Practice

Jim Brown  
Development Worker  
Carers of West Lothian

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# Innovation in Practice – improving uptake of POA

Key points from West Lothian work:

- *Started working at CoWL 2006, ever increasing number of enquiries from Carers of someone with a diagnosis of Alzheimer's/Dementia.*
- *Projection for West Lothian at that time was 150% increase in over 75's in a decade and therefore an obvious proportionate increase in the number of dementia cases.*
- *Post Diagnostic Support Team at the time did their best to assist families with POA, downloading and completing POA docs from the OPG website.*



# Innovation in Practice – improving uptake of POA

## What we did:

- Post-diagnostic Support Team developed links with Carers of West Lothian, referring Carers for ongoing support and to instigate discussions around POA.
- Made contact with solicitors, (currently Blackadders) to provide POA service at reduced cost, appointments at the Carers Centre.
- Development Worker attended multi-disciplinary team (MDT) meetings in most medical wards at St John's Hospital, and is now also part of an Integrated Discharge Hub team attending daily flow meetings.



# Innovation in Practice – improving uptake of POA

## Results:

- Through collaboration with HSCP Teams we are able to offer a faster, stress free and affordable opportunity to arrange a suitable POA.
- Better overall support for Carers to manage their role, can mean the difference between a hospital admission or the patient being managed at home.
- A proactive referral could mean the difference between a patient becoming a delayed discharge or moved to an appropriate destination via activation of an existing POA document.



# Innovation in Practice – improving uptake of POA

Advice I'd give to others:

- Use your local Carers Centre, they are there to help and some will already have the ability to help with POA appointments.
- Make any referral at the earliest possible opportunity, we can't guarantee that all will end up with a POA but we can say that everyone will be encouraged to do so and, be made aware of the benefits of having one in place.

[office@carers-westlothian.com](mailto:office@carers-westlothian.com)



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# Question and answer session

## Panel:

Jim Brown  
Development Worker  
Carers of West Lothian

Jill Carson  
Consultant in Public Policy  
Alzheimer Scotland

Vivek Pattan  
Consultant Psychiatrist  
NHS Forth Valley

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# Further resources to support practice



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# Resources

Carers of West Lothian

<https://carers-westlothian.com/power-of-attorney/>

NES Think Capacity Think Consent

[https://www.nes.scot.nhs.uk/media/fqca5enl/capacity\\_and\\_consent-interactive.pdf](https://www.nes.scot.nhs.uk/media/fqca5enl/capacity_and_consent-interactive.pdf)  
[Mypowerofattorney.org.uk](http://Mypowerofattorney.org.uk)

Office of the Public Guardian

<https://www.publicguardian-scotland.gov.uk/power-of-attorney>

Age Scotland

<https://youtu.be/c9xtjhPOD1c>

Alzheimer Scotland

[Money and Legal Matters](#)

VOCAL (Edinburgh and Midlothian)

[Power of attorney - VOCAL](#)

The Scott Review

<https://mentalhealthlawreview.scot/>

# Resources (cont'd)

[Mental Welfare Commission for Scotland: Adults with Incapacity Act](#)

[Quick Guide: Power of Attorney for staff in hospitals and care homes](#)

[Quick Guide: Power of Attorney under Adults with Incapacity \(Scotland\) Act 2000 for general practitioners](#)

[Common Concerns with Power of Attorney: Good Practice Guide](#)

[Working with the Adults with Incapacity Act – for people working in adult care settings: Good practice guide](#)

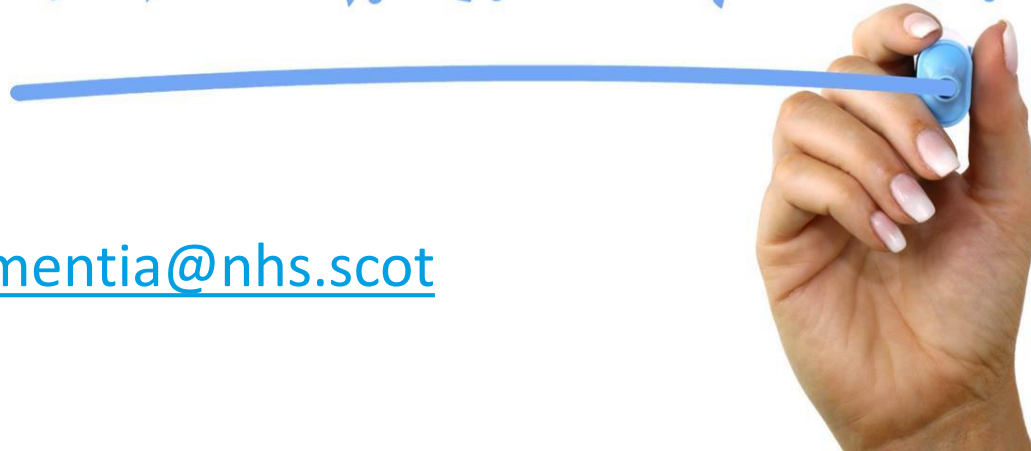
[Authority to discharge: Report into decision making for people in hospital who lack capacity](#)

[Right to treat? Delivering physical healthcare to people who lack capacity and refuse or resist treatment: Good practice guide](#)

[The scope and limitations of the use of section 47 of the Adults with Incapacity Act: Advice Notes](#)

# Closing remarks and evaluation

THANK YOU



[his.focusondementia@nhs.scot](mailto:his.focusondementia@nhs.scot)

# Confirmed future webinars – save the date

## **Frailty Improvement Programme webinars:**

7 steps to polypharmacy

Tuesday 31 January 2023

13:00 - 14:00

Frailty journey in Orkney

Tuesday 28 February 2023

13:00 - 14:00

Email [his.frailty@nhs.scot](mailto:his.frailty@nhs.scot) for more information.

## **Focus on Dementia webinars:**

Supporting people with a learning disability  
and advanced dementia moving into a care home

Wednesday 8 March 2023

14:00 - 15:30

Email [his.focusondementia@nhs.scot](mailto:his.focusondementia@nhs.scot) for more information.