



Higher National Unit specification: general information

Unit title: Law and Practice Relating to Adults with Incapacity

Unit code: FT6H 35

Superclass: EC

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Unit purpose

This Unit is designed to provide candidates with an understanding of legislation and legal procedures relating to Adults with Incapacity and the function of the Office of the Public Guardian in such legislation. Candidates will be able to prepare a power of attorney and a simple guardianship account as a practicing or registered paralegal may be expected to under the guidance of a supervising solicitor. Candidates will also be able to apply their knowledge to different circumstances so that, under the guidance of a supervising solicitor, they could provide information to clients tailored to a variety of situations. The Unit is suitable for those in employment as a paralegal who wish to undertake Continuing Professional Development, and for candidates who aspire to the role.

On completion of the Unit the candidate should be able to:

- 1 Apply the main sources of legislation in relation to adults with incapacity.
- 2 Prepare a Power of Attorney.
- 3 Apply the procedure for the Access to Funds Scheme.
- 4 Prepare a Summary Application for a Guardianship Order.
- 5 Explain the responsibilities of the Guardian or Intervener in relation to the incapacitated adult's financial and welfare affairs.

Recommended prior knowledge and skills

Access to this Unit is at the discretion of the centre. However, candidates would normally be expected to have competence in *Communication Skills* at SCQF level 6 or equivalent.

General information (cont)

Credit points and level

2 Higher National Unit credits at SCQF level 8: (16 SCQF credit points at SCQF level 8*)

**SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes of this Unit specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Assessment

The whole of the Unit may be assessed with four assessments covering the five Outcomes.

Centres will have discretion in designing assessments so that they can assess Outcomes individually or combine Outcomes where they consider it appropriate.

Higher National Unit specification: statement of standards

Unit title: Law and Practice Relating to Adults with Incapacity

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

Outcome 1

Apply the main sources of legislation in relation to adults with incapacity.

Knowledge and/or Skills

- ◆ Adults with Incapacity Act 2000 and the five general principles within
- ◆ Social Work (Scotland) Act 1968
- ◆ The Adult Support and Protection (Scotland) Act 2007
- ◆ Office of the Public Guardian (Scotland)
- ◆ Mental Welfare Commission — Roles and functions
- ◆ Local Authority involvement
- ◆ Advocacy issues
- ◆ Advance statements
- ◆ Interim orders
- ◆ Compulsory treatment orders

Evidence Requirements

Candidates will provide written and/or oral evidence of being able to apply their knowledge of legislation and legislative measures in order to facilitate adults believed to be subject to the criteria of the relevant legislation. The adult will not presently be subject to any local authority intervention.

Candidates will be expected to apply their knowledge to a scenario or set of scenarios involving an adult believed to have a mental health difficulty and provide suitable advice subject to appropriate supervision.

The case study scenario(s) should provide questions from an individual who approaches a Paralegal with concerns about an adult whom they believe has mental incapacity issues, and is not to their knowledge subject to any local authority intervention. The candidate should provide written responses to these questions presented.

Higher National Unit specification: statement of standards (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

The scenario(s) should cover at least two of the following:

(i) Advocacy issues; (ii) Advance Statements; (iii) Interim orders and (iv) Compulsory Treatment Orders.

Candidates should cover the five general principles in the advice provided, namely:

- ◆ Benefit (to the incapacitated adult)
- ◆ Least restrictive option
- ◆ Take account of the wishes of the adult
- ◆ Consultation with relevant others
- ◆ Encouraging the person to exercise skills they have and the development of new skills

In addition, written and/or oral evidence of knowledge which cannot be inferred from the above scenario(s) may be sampled.

The practical evidence should be gathered under closed-book conditions in a supervised situation.

Assessment Guidelines

The first assessment will require the candidate to apply their knowledge of the Mental Welfare Commission. The candidate could be provided with a case study scenario containing several situations relevant to working practice which are within the ambit of the powers of the Commission. The candidate would be required to provide advice to the prospective client in each situation on the relevant matter(s), which could take the form of questions and concerns about issues relating to but not limited to; (i) Advocacy issues; (ii) Advance Statements; (iii) Interim orders; (iv) CTOs (Compulsory Treatment Orders) or any other issues which a Paralegal would reasonably come across and/or be expected to deal with in a workplace environment.

An alternative may be for the candidate to complete a report, requiring them to ascertain the main provisions of the Adults with Incapacity (Scotland) Act 2000 and other accompanying legislation (as mentioned in the Knowledge and/or Skills section) relating to incapacitated adults. The report could be the equivalent of 2500-3000 words.

This alternative would be beneficial to candidates who are possibly involved in practical work relating to incapacity already but have not necessarily been aware of law pertaining to their job. It would also allow candidates who work in either the public or private sector to consider the legislative framework from the opposite side. This assessment would serve to provide an appreciation and understanding of the legal perspectives surrounding incapacity prior to the other more practically orientated assessments.

Higher National Unit specification: statement of standards (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Outcome 2

Prepare a Power of Attorney.

Knowledge and/or Skills

- ◆ Continuing Powers of Attorney
- ◆ Welfare Powers of Attorney
- ◆ Reasons for different types of Powers of Attorney
- ◆ Certificate of Capacity issues
- ◆ Role of the Office of the Public Guardian
- ◆ Addition, removal and/or substitution rules in relation to Attorney

Evidence Requirements

Candidates will provide written evidence to show that they can prepare a Power of Attorney for a given situation(s).

Candidates will be presented with a case study scenario; the case study should assume there are no issues surrounding capacity.

The draft Power of Attorney should be based on detailed notes surrounding the situation of an individual for whom the completion and registration of this may be suitable to their circumstances.

The Power of Attorney should meet the following requirements:

- ◆ Be consistent with current legislation
- ◆ Comply with the rules of the Office of the Public Guardian
- ◆ Contain necessary powers an Attorney may require
- ◆ In line with client's requirements

Candidates should also provide a justification either in writing or orally as to whether the addition, removal or substitution of an Attorney would be permissible after the Power of Attorney has been signed.

In addition, written and/or oral evidence of knowledge which cannot be inferred from the above scenario(s) may be sampled.

Higher National Unit specification: statement of standards (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Assessment Guidelines

In order to meet the Evidence Requirements the assessment here could be divided into two distinct areas. The first being the requirement of the candidate to view a series of case studies, with the candidate being required in each case, via multiple choice, to state whether addition, removal or substitution of an Attorney would be the most viable option to suit the parties involved. The second part of the assessment could be the completion of a registration form for a Power of Attorney for either (i) property and financial affairs or (ii) health and welfare issues. This would be based on a detailed case study being provided to the candidate at the time of the assessment with the candidate being expected to input the relevant details into the application form to create a realistic situation, with the view to the application then being sent to the Office of the Public Guardian for approval.

An alternative to this could be for the candidate to be presented with a completed but flawed registration form for a Power of Attorney for either (i) property or financial affairs or (ii) health and welfare issues. The candidate could then be required to present written and/or oral advice to the party who has presented the registration document as to why parts of require to be altered or clarified in line with the requirements of the Office of the Public Guardian.

Outcome 3

Apply the procedure for the Access to Funds Scheme.

Knowledge and/or Skills

- ◆ Access to Funds Scheme and completion of application form
- ◆ Appointment as Withdrawer.

Evidence Requirements

Candidates will provide written and/or oral evidence of being able to apply their knowledge of legislation and legislative measures in order to apply the procedure for the Access to Funds Scheme successfully. The adult will not presently be subject to any local authority intervention.

Candidates will be given a case study of an incapacitated adult which includes information on financial and welfare matters which they must consider in their response. They will be required to:

- ◆ Comment on the applicability or otherwise of the adult for whom application is being made to the Access to Funds Scheme and provide justification for their answer.
- ◆ Explain how the Scheme works in practice.
- ◆ Explain who can be appointed as Withdrawer.
- ◆ Detail the information required and the charges involved.
- ◆ Complete an application to access funds on behalf of an adult who has been deemed incapacitated.

The assessment will be provided to the candidate two weeks prior to the submission date and will be conducted in the candidate's own time.

Higher National Unit specification: statement of standards (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Assessment Guidelines

In order to meet the Evidence Requirements the assessment could be the completion of an application to access funds on behalf of an adult, such as a parent, who is no longer able to access funds. The information could be presented in a case study format of continuous prose. The assessment could take the form of a completed application form, with the candidate being advised to infill all relevant information as mentioned in the case study.

An alternative to this could be for the candidate to be presented with a semi-completed Fitness to Access Funds Form, presented by a potential applicant on behalf of an incapacitated parent, for example. For this assessment the candidate would be required to present a series of questions to the potential applicant in order to gain more information from them to allow the form to be completed.

The candidate could be provided with a case study scenario containing sufficient information to allow preparation of the appropriate client report. The client report will address the above points accurately.

Outcome 4

Prepare a Summary Application for a Guardianship Order.

Knowledge and/or Skills

- ◆ Types of Guardianship Order
- ◆ Intervention Order
- ◆ Sheriff Court rules and processes
- ◆ Requesting Medical, Social Work Report or other third party reports

Higher National Unit specification: statement of standards (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Outcome 5

Explain the responsibilities of the Guardian or Intervener in relation to the incapacitated adult's financial and welfare affairs.

Knowledge and/or Skills

- ◆ The Office of the Public Guardian Code of Practice for Guardians
- ◆ Bond of Caution and supervision of guardians
- ◆ Preparation of Inventory
- ◆ Preparation of Management Plan
- ◆ Obtaining authority Powers to buy and sell property
- ◆ Preparation of Guardianship Account
- ◆ The expedited renewal process for combined welfare and financial appointments
- ◆ Preparation of Discharge Application Forms
- ◆ Preparation of application to Renew, Discharge or Recall of Guardianship
- ◆ Application by Guardian to Public Guardian for consent to make gifts from the adult's estate
- ◆ Mental Health (Care and Treatment) Scotland Act 2003
- ◆ Adults with Incapacity Act (Scotland) 2000 Act.

Evidence Requirements for Outcomes 4 and 5

Candidates will provide written evidence to show that they can prepare a Summary Application for a Guardianship Order.

Candidates will be provided with a case study scenario(s) detailing information surrounding the circumstances of an adult whom the applicant considers to be incapacitated. The case study will involve incapacity in respect of both physical and mental disorder(s) which will require knowledge of the Adults with Incapacity (Scotland) Act 2000 (as amended by the Adult Support and Protection (Scotland) Act 2007). The candidate will be expected to complete a summary application for a guardianship order based on the case study details which combine factors of welfare, financial and property matters. Emphasis should be placed within the assessment on financial matters relating to the individual on whose behalf the application is being made, in particular the right to sell or purchase property on behalf of the incapacitated adult.

Candidates should be able to successfully use the information provided to draft a relevant summary application.

Higher National Unit specification: statement of standards (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

The Summary Application should meet the following requirements:

- ◆ Comply with the Sheriff Court rules.
- ◆ Include all appropriate information in relation to the incapacitated adult, including any necessary medical and social work reports.
- ◆ Notify all appropriate persons of the application.
- ◆ Contain the necessary powers a Guardian may require.
- ◆ In accordance with Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity Act (Scotland) 2000 Act.

The candidate must also:

- ◆ Prepare a suitable inventory and management plan for the incapacitated individual.
- ◆ Complete a Discharge Application form required by legislation with a comprehensive and detailed account of the background of both the guardian and the incapacitated adult provided for the assessment.

In addition, written and/or oral evidence of knowledge which cannot be inferred from the above scenario(s) may be sampled.

The case studies will be provided to the candidate two weeks prior to the submission date and will be conducted in the candidate's own time.

Assessment Guidelines for Outcomes 4 and 5

In order to meet the Evidence Requirements the assessment of Outcomes 4 and 5 may take the form of a summary application for a Guardianship Order. The assessment may take the form of a case study detailing factual information surrounding the circumstances of an adult whom the applicant considers to be incapacitated. Emphasis should also be placed within the assessment on financial matters relating to the individual on whose behalf the application is being made. Candidates should be able to successfully use the information provided to draft a relevant summary application for consideration by a Sheriff.

The candidate could be required to consider a case study of an incapacitated adult and decide whether the guardianship order be renewed or otherwise. The case study could also be combined with a series of restricted response questions on caution and the supervision of guardians, the responsibilities of a Guardian or intervening third party, what the Bond of Caution is and why it is required and the process for obtaining authority to buy or sell property.

Higher National Unit specification: support notes

Unit title: Law and Practice Relating to Adults with Incapacity

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 80 hours.

Guidance on the content and context for this Unit

The purpose of this Unit is firstly to provide candidates with an understanding of the law relating to Adults with Incapacity. This Unit will be of benefit not only to law students but to students studying subjects such as Social Work.

With the numbers of adults diagnosed with dementia increasing, many individuals are choosing to grant Powers of Attorney at an earlier age.

There are two main types of Power of Attorney, a Continuing Power of Attorney which deals with financial matters and a Welfare Power of Attorney dealing with welfare matters such as decisions relating to medical care and choosing a nursing home. The two types can be prepared as separate documents or as a combined document. The completion of a Power of Attorney can be advantageous to all parties privy to it, not least the adult central to it. It can allow for relatives to take over the affairs of the adult and take decisions, financial or otherwise, on their behalf. Disadvantages though are apparent, such as what happens if there are one or more people acting as the Power of Attorney and a death of one of them occurs, or if there is conflict as to what is in the best interests of the adult.

Accordingly, candidates will become aware of legislative provision within the Scottish legal system which allows them to develop their understanding and appreciation of the need for Powers of Attorney to have to be subject to legal protection. Legislative provision is important within the public and private spheres of safeguarding adults who are or may become subject to such protection. Regarding the former, The Adult Support and Protection (Scotland) Act 2007 is one such important piece of legislation, which includes aspects relating to incapacity, in respect of local authorities as it places an additional duty of care on them regarding potential abuse of incapacitated adults, and provides these local authorities with the right to apply for various new Court orders. This Act provides additional responsibilities and powers for local authorities, following on from Acts including amongst others, the Social Work (Scotland) Act 1968 and the Adults with Incapacity (Scotland) Act 2000.

The Unit will provide the candidate with the skills to prepare a Power of Attorney and be aware of the different types of Power of Attorney and the range of powers contained in each type, as well as the necessary reports that may be required before an application for a Power of Attorney is granted. As an example, it may be that Social Work reports are required, although if the Power of Attorney was being applied for exclusively in relation to financial matters regarding the adult, such a report may not always be relevant. The candidate will become aware not just of the different types of Power of Attorney, but the background to them and the requisite steps necessary to making the application.

Higher National Unit specification: support notes (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

The current style of Power of Attorney contains a certificate confirming that the adult had capacity and understood what they were signing at the time they signed the document. This certificate must be signed by a solicitor or a doctor who must sign at the same time and in the presence of the adult.

In the Scottish legal system it is understood that an adult who is incapacitated may well have lucid moments and it is perfectly competent for them to grant a Power of Attorney during one of such lucid moments. The Unit will provide the candidate with the knowledge of how incapacity is determined and how to identify whether an adult has capacity or not and the procedures to take when capacity is in doubt.

The regulatory authority for matters relating to the Adults with Incapacity Act is the Office of the Public Guardian in Scotland. The Unit will provide the candidate with an understanding of the role of the Office of the Public Guardian and the rules with which an Attorney, Intervenor or Guardian must comply.

Where a Power of Attorney is not in place and an adult is deemed to be incapable of making decisions then a Power of Attorney is no longer appropriate and an Access to Funds Application, Intervention Order or Guardianship Order may be required. This Unit will equip the candidate with the skills to identify which procedure would be most appropriate taking into account the adult's financial situation.

It will also give them an understanding of the procedures for a Guardianship Order and the other types of Intervention Orders available, including the court procedure and information required for a Court Petition.

The Office of the Public Guardian in Scotland is the public body which oversees such procedures under the Adults with Incapacity legislation and the Unit will provide the candidate with knowledge of their structure, functions, powers and fees to enable the candidate to correctly administer such procedures.

Where an adult's funds are being managed by an Attorney, Intervenor or Guardian then there is an obligation to keep records of all transactions undertaken. Particularly in a Guardianship situation, the Guardian must complete an Account in a style prescribed by the Office of the Public Guardian and this Unit will provide the candidate with the skills to complete such an Account.

Guidance on the delivery and assessment of this Unit

This Unit is part of the Professional Development Award in Law and Practice Relating to Adults with Incapacity.

Delivery of this Unit would be enhanced if candidates were made aware of the relevance of this Unit in today's society where there is an increasing number of the population suffering from mental health issues, such as Alzheimer's syndrome and Dementia. The Unit could make full reference to the work of the Office of the Public Guardian in such matters. The Unit would be enhanced by a visit to the Office of the Public Guardian.

Higher National Unit specification: support notes (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Teaching should concentrate on informing the candidate of the Adults with Incapacity legislation and guidelines of the Office of the Public Guardian. Candidates should be encouraged to make full use of the Office of the Public Guardian website and the Adults with Incapacity Section on the Scottish Government website.

By such means candidates will be encouraged to work independent of the classroom environment. This should be to their benefit when preparing for assessments which are carried out under closed-book conditions and assessments which are carried out in the candidate's own time.

Open learning

This Unit is suitable for open and distance learning delivery. The assessment strategy and guidelines described in this specification must still be applied if this method of delivery is chosen.

For further information and advice, please refer to the SQA document *Assessment and Quality Assurance for Open and Distance Learning* which is available on SQA's website www.sqa.org.uk.

Opportunities for the use of e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or e-checklists. Centres which wish to use e-assessment must ensure that the national standard is applied to all candidate evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. Further advice is available in *SQA Guidelines on Online Assessment for Further Education (AA1641, March 2003)*, *SQA Guidelines on e-assessment for Schools (BD2625, June 2005)*.

Opportunities for developing Core Skills

All elements of the Core Skill of *Problem Solving* — critical thinking, planning, organising, reviewing and evaluating — are naturally developed as candidates analyse fictitious case studies and consider a range of welfare, financial and property matters relating to adults believed to have a mental health difficulty. An understanding of the legal perspectives surrounding incapacity should involve appreciation of the limitations of the paralegal role. Although candidates work independently to manage and complete practical tasks there will be on-going discussion of case studies with opportunities to review and evaluate best practice in approaches and solutions.

There is a client focus in the practical tasks of the award; case studies presented for analysis will be designed to emphasise the importance of *Working with Others*. The impact of written, verbal and non-verbal communication techniques in interactions should be emphasised. Candidates could also enhance their own interpersonal skills by explaining, describing and listening in formative discussion of contextualised case studies that focus on the needs of incapacitated adults. Opportunities for evidencing competence in oral communication may also be provided by supplementary questioning, or sampling.

Higher National Unit specification: support notes (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Numeracy skills should be developed in order that candidates can audit, interpret and present accurate financial data relating to issues of access to funds and legal aid. Access to appropriate software could support this process.

Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website www.sqa.org.uk/assessmentarrangements

History of changes to Unit

Version	Description of change	Date

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General information for candidates

Unit title: Law and Practice Relating to Adults with Incapacity

What this Unit is about

The purpose of this Unit is firstly to provide you with an understanding of the law relating to Adults with Incapacity and the function of the Office of the Public Guardian in such legislation.

This Unit may be assessed with four assessment events.

The first assessment event will cover Outcome 1 and you will have to apply the main sources of legislation in relation to adults with incapacity. This will involve you dealing with a scenario or set of scenarios involving an adult believed to have a mental health difficulty and providing suitable advice, under the direction of a supervising solicitor, to the person who approaches you about that individual's welfare.

For Outcome 2 you will have to prepare an appropriate Power of Attorney and associated Registration Form. You will additionally have to complete some structured (multiple choice) questions regarding different types of Power of Attorney.

The third assessment will cover Outcome 3 and you will be required to prepare a report to a client with an elderly parent or other adult on the Access to Funds Scheme. You will be required to explain who can be appointed as Withdrawer, explain how the Scheme will work in practice and detail the information required and the charges involved. You will be given a case study which will contain sufficient information to allow preparation of the appropriate report. The case study will be given to you to work on at home for submission within approximately two weeks.

The fourth assessment will cover Outcomes 4 and 5 and you will be required to complete a Guardianship Account using the style prescribed by the Office of the Public Guardian.

You will learn about:

- ◆ Continuing Powers of Attorney
- ◆ Welfare Powers of Attorney
- ◆ Capacity
- ◆ Office of the Public Guardian
- ◆ Types of Guardianship Orders
- ◆ Court process
- ◆ Current legislation regarding Guardianship Orders
- ◆ Evidence required for ascertaining incapacity
- ◆ Access to Funds Scheme
- ◆ Appointment as Withdrawer
- ◆ Office of the Public Guardian style of account.
- ◆ Codes of Practice for Guardians, Attorneys, Withdrawers
- ◆ Code of Practice for Local Authorities

Outcome 1 deals with Powers of Attorney which is the document which can be granted before an individual is affected by incapacity. With the numbers of adults diagnosed with dementia increasing, many individuals are choosing to grant Powers of Attorney at an early age.

General information for candidates (cont)

Unit title: Law and Practice Relating to Adults with Incapacity

Outcome 2 deals with preparing a Power of Attorney.

Outcome 3 deals with the procedures for the Access to Funds Scheme.

Outcome 4 deals preparing a Summary Application for a Guardianship Order.

Outcome 5 deals with responsibilities of the Guardian or Intervener in relation to the incapacitated adult's financial and welfare affairs.