

Does someone you support have a legally appointed guardian?

If you provide a service to people who have a disability which affects their capacity to make their own decisions then you need to know about the role of a guardian.

How will you know if a guardian has been appointed?

What is a guardian?

A guardian is a person who is legally appointed by the Guardianship Tribunal or the Supreme Court to make one or more decisions on behalf of another person. These decisions relate to personal issues such as where to live, what services to engage or to consent to medical and dental treatment. A decision made, or consent given, by the guardian has the same legal force as if the person themselves made the decision or gave the consent.

A guardian can be a family member or friend, a private guardian or the Public Guardian. The Public Guardian is appointed as guardian of last resort in situations where there is conflict, significant ethical considerations or where there is no other person able to take on the responsibility.

A private guardian does not make financial decisions on behalf of the person unless they have also been appointed as the person's financial manager or have been given an enduring power of attorney by the person before they lost capacity. The Public Guardian never makes financial decisions on behalf of the person under guardianship.

A guardian is only appointed for a period of time. The guardian may be a carer as well as a guardian but the Public Guardian will never be responsible for the physical care of the person.

In most circumstances, family members, friends or other service providers involved in the support of a person with a disability will be aware of the appointment of a guardian if this has occurred. A legal order outlining the responsibilities of the guardian and the duration of the order will be held by the guardian which they may make accessible if there is dispute or uncertainty about their authority.

In circumstances where it is unclear as to whether or not a person has a legally appointed guardian, it may be necessary to call the Guardianship Tribunal during office hours to determine if there is a private guardian and who that person is or to call the Public Guardian at any time to determine if the Public Guardian is the guardian.

Why is it important?

If a guardian is legally appointed, only he or she has the **authority** to make a decision or to provide consent in the areas stipulated in the guardianship order. For example, if a guardian has been appointed to provide consent to medical treatment, a treating practitioner would be acting illegally if s/he gained consent from another person, just as a service provider would if they overrode the person's objections. (If you are a service provider in the health area you must also be familiar with the provisions of Part 5 of the Guardianship Act to ensure that your actions are legal in all circumstances).

For further information contact:

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The Guardianship Tribunal

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