SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT LERWICK

[2026] SC LER 51

LER-AW5-25

JUDGMENT OF SHERIFF PHILIP MANN

in the cause

Application by Shetland Islands Council

For a Welfare Guardianship Order

In respect of

J C

LERWICK, 20 March 2026

The sheriff, having considered the application and productions and having heard parties thereon, allows the petition to be amended as per interlocutor of 13 March 2026; thereafter, grants the amended application and appoints the Chief Social Work Officer of Shetland Islands Council, 8 North Ness Business Park, Lerwick, Shetland, ZE1 0LZ to be welfare guardian to JC, born 4 May 2004, for a period of 3 years from this date in terms of Part 6 of the Adults with Incapacity (Scotland) Act 2000 with the following functions and duties:

1.1 To determine and implement a care plan in respect of the adult's health, welfare and social issues which is sufficient to meet his personal welfare and care needs, including aspects such as supervision and support within the adult's residence;

1.2 To decide where the adult should reside, to require him to reside in that location, to convey him there and to return him to that location in the event of him absenting himself therefrom;

1.3 To determine whether or not the adult should be accompanied to medical or dental appointments by a person nominated by his guardian, as appropriate, and to make inquiries concerning any proposed medical or dental treatment on behalf of the adult at said appointments or in connection therewith;

1.4 To make decisions regarding, to consent to, or to withhold consent for, medical or dental treatment or procedure or therapy, including specialist or residential treatment or assessment, for the adult as deemed appropriate;

1.5 To ensure all correspondence addressed to the adult which relates to his personal welfare is opened and dealt with on his behalf;

1.6 To determine whether the adult should be permitted to participate in holidays, and cultural and social events and if so the nature and extent thereof; and

1.7 To determine whether or not the adult should be accompanied by a person nominated by his guardian to assist with his personal safety and welfare.

2.1 the guardian shall exercise the powers set out in paragraph 1.1 - 1.7 with a view to encouraging and assisting the adult to make, and promoting and facilitating the ability of the adult to make, decisions for himself and shall override any decision of the adult only when it is necessary to do so in order to keep the adult safe and to avoid any detriment to his welfare.

2.2 The guardian shall have no power to direct, or arrange for, the adult to live in family with any individual or individuals as if he were to be placed in foster care as a looked after child of the local authority or as if he were subject to a permanence order.

2.3 The guardian shall at all times use best endeavours to ensure that the day to day management of the guardianship order is entrusted to, and that the adult's point of contact is, someone who can gain and maintain the adult's trust.

2.4 The opening and dealing with the adult's correspondence shall be done only if the adult neglects to do so himself or unreasonably delays in doing so.

2.5 The guardian shall bear in mind the adult's fondness for traveling when considering the issue of holidays.

And that upon issue by the public guardian of a certificate of appointment; finds the curator entitled to the expenses incurred in the preparation of her report as taxed and allows an account thereof to be given in and Remits same to the auditor of court to tax and to report; said expenses to be met by the local authority; authorises the public guardian to issue a certificate of appointment; and decerns

Note

[1] This was an application by Shetland Islands Council for the appointment of their chief social work officer as welfare guardian in respect of JC. It was presented in terms of section 57(2) of the Adults with Incapacity (Scotland) Act 2000, there being no other person willing to make such an application, and was supported by the statutory reports specified in subsection (3) of that section.

[2] The adult, JC, is a 21 year old young man. All of the statutory reports confirmed that he has a learning disability and lacks capacity to make the decisions necessary to secure and protect his welfare. Despite this it was also clear that JC, although he operated at the level of an 11 or 12 year old child, was very intelligent and articulate and was very adept at the use of artificial intelligence to marshal quite complex arguments. This gave the impression that he was well capable of making welfare decisions for himself but it was also clear that he simply parroted what had been prepared by artificial intelligence and did not, in fact, truly understand it.

[3] By the time of my involvement with the case it had acquired a relatively substantial procedural history. The adult had been legally represented and had vigorously opposed the granting of the order sought. His solicitor, however, withdrew from acting upon receipt of a psychiatric report which they had commissioned and which queried the adult's capacity to instruct solicitors.

[4] Following upon the withdrawal of his solicitor the adult lodged a number of detailed submissions in opposition to the grant of the order sought. These had obviously been prepared with the assistance of artificial intelligence and gave the impression that he did not lack capacity, as I have previously mentioned.

[5] In order that I could be satisfied that the adult had been given every opportunity to put forward his case in opposition I appointed a *curator ad litem* to report to the court on all aspects of the adult's life; and with full power to the *curator ad litem* to enter the process and to do everything in the name of and on behalf of the adult that the adult could do himself in opposition to the application. The *curator ad litem* duly reported to the court that she supported the application for the grant of a welfare guardianship and offered no opposition on behalf of the adult.

[6] I remained uneasy about granting the application in light of the adult's own very eloquent submissions, even though they had been prepared with the assistance of artificial intelligence. I was also concerned to ensure that the adult was involved in the process to the fullest extent possible. I therefore determined to meet with the adult and duly did so by way of Webex video conferencing. My clerk and the adult's independent advocacy worker were also in attendance. During that meeting it became clear to me why the assessment of the adult's capacity in the statutory reports might be questioned. He was articulate and focussed but in the end I was satisfied that the professional assessment of his lack of capacity

ought to be respected, having regard to the paramount objective of protecting the adult's welfare.

[7] The adult did, however, manage to get across his concerns about the powers sought in the application. The powers sought and the adult's concerns were as follows:

> 1.1 To determine and implement a care plan in respect of the Adult's health, welfare and social issues which is sufficient to meet his personal welfare and care needs, including aspects such as supervision and support within the Adult's residence. The adult's concern was, quite simply, that he would be ordered around and would have no say in how he could live his life.
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> 1.2 To decide where the Adult should reside, to require him to reside in that location, to convey him there and to return him to that location in the event of him absenting himself therefrom. The adult's concern was that he had been subject to social work intervention during his childhood and that he had been placed in the care of his mother's partner who had abused him. He did not want there to be any chance that he would again be placed in such a vulnerable position.
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> 1.3 To determine whether or not the Adult should be accompanied to medical or dental appointments by a person nominated by his Guardian, as appropriate, and to make inquiries concerning any proposed medical or dental treatment on behalf of the Adult at said appointments or in connection therewith. Beyond a general mistrust of the applicant's social work department arising from his childhood experiences the adult had no specific concern regarding this power.
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> 1.4 To make decisions regarding, to consent to, or to withhold consent for, medical or dental treatment or procedure or therapy, including specialist or residential treatment or assessment, for the Adult as deemed appropriate. Again, beyond a general mistrust of the applicant's social work department arising from his childhood experiences the adult had no specific concern regarding this power.
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> 1.5 To ensure all correspondence addressed to the Adult which relates to his personal welfare is opened and dealt with on his behalf. The adult objected on the basis that he always promptly opened his mail.
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> 1.6 To determine whether the Adult should be permitted to participate in holidays, and cultural and social events and if so the nature and extent thereof. The adult was concerned that his love of travel would be disregarded by the guardian.

> 1.7 To determine whether or not the Adult should be accompanied by a person nominated by his Guardian to assist with his personal safety and welfare. Again, the adult was concerned that he would be ordered around and would have no say in how he could live his life.

[8] Reflecting on the adult's concerns it seemed to me that the adult did not fully understand the concept of welfare guardianship and what it would mean for him on a day to day basis. I took the view that within any order for guardianship it should be made clear what constraints would be placed on the guardian in the exercise of the powers granted in order that the adult could understand that his concerns were understood and would be recognised and taken account of in so far as possible. At the next hearing of the application following upon my meeting with the adult I suggested to the applicants that they consider seeking leave to amend their application by the addition of conditions to the grant of the order as follows - on the view that what was proposed did not add anything to the restrictions on the operation of the guardianship order over and above those required by statute:

> 2 to make the grant of the guardianship order subject to the following conditions:
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> 2.1 the guardian shall exercise the powers set out in paragraph 1 hereof with a view to encouraging and assisting the adult to make, and promoting and facilitating the ability of the adult to make, decisions for himself and shall override any decision of the adult only when it is necessary to do so in order to keep the adult safe and to avoid any detriment to his welfare.
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> 2.2 the guardian shall have no power to direct, or arrange for, the adult to live in family with any individual or individuals as if he were to be placed in foster care as a looked after child of the local authority or as if he were subject to a permanence order.
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> 2.3 the guardian shall at all times use best endeavours to ensure that the day to day management of the guardianship order is entrusted to, and that the adult's point of contact is, someone who can gain and maintain the adult's trust.

> 2.4 the opening of and dealing with the adult's correspondence shall be done only if the adult neglects to do so himself or unreasonably delays in doing so.
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> 2.5 the guardian shall bear in mind the adult's fondness for travelling when considering the issue of holidays.

[9] That hearing was continued to allow the applicant's agents to take instructions on the proposed amendments and to allow me the opportunity to have a further meeting with the adult.

[10] During a subsequent meeting via the Webex platform between me and the adult, with the sheriff clerk and the adult's advocacy worker both present, I explained to the adult what I had proposed by way of amendment to the application. The adult was clearly appreciative of the fact that he had been consulted directly by the sheriff. He expressed himself content with the proposed amendments and indicated that he would no longer oppose the granting of the application if it were duly amended.

[11] At the subsequent hearing of the application the amendment was duly moved and allowed and the application, as amended, was granted unopposed by the *curator ad litem.*

[12] Following the grant of the application I took the opportunity to write to the adult in the following terms:

> "Dear J
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> Thank you for agreeing to meet with me to discuss your concerns about the granting of a guardianship order. I was very interested to hear your views and, as we discussed at our last meeting, I have taken your concerns into account in making my final decision. As I indicated to you, I am satisfied that the grant of a guardianship order is necessary but I have made it subject to various conditions which I hope will reassure you that the purpose of the order is not to allow anyone to come in and order you around on a day to day basis but that it is about making sure that all of the support that is available to you now in the way that you live will continue to be available to you. You should get a copy of the guardianship order, as granted, from the sheriff clerk soon.

There is one thing that I would like to make very clear. The guardian has been directed by me to make best endeavours to ensure that the person with day to day management of the guardianship order and your point of contact is someone who can gain and retain your trust. You need to understand that this does not give you any sort of veto over who is appointed to this role and you will have to use your best endeavours (that is, try your very hardest) as well to get on with this person. But, in the end of the day, if no one can be found who can gain and retain your trust you will just have to put up with the situation. I would like to think that it would not come to that.

I know that you are very wary of the social work department of Shetland Islands Council and I understand your reasons for that. But, I am sure that the guardian, the curator ad litem and everybody else involved in this whole process, including [your independent advocacy worker], have your welfare as their top priority. I do trust the curator ad litem, otherwise I would not have appointed her. I do also trust Shetland Islands Council and their chief social work officer and that they will act in your best interests.

However, as we discussed at our last meeting, you cannot expect always to get what you want or for things to be organised always as you would want it. You will most likely need to make concessions from time to time.

You do have the right to apply to the court if you think that the guardianship order needs to be changed in any way or should be revoked or if you want the court to order the guardian to do something or to stop doing something that you are unhappy about; but you need to know that there is no guarantee that the court will do what you want – it will always make its decision based on what is thought to be in your best interests at the time.

But, please don't come to the court for trivial matters because that is not what the court is for. Only come to the court for things that are really important and affect your welfare, only after you have given this guardianship a fair go and only as a last resort. The guardian has a legal duty to consult you and to listen to you and to consider your views, but is not bound to do what you want. The guardian has a legal duty to encourage you and to allow you to make as many decisions for yourself as is possible, but will always be careful to make sure that you are not getting yourself into a risky situation. So, the first step is always to discuss issues with your guardian or his staff in an open, honest and respectful way. If you have an advocacy worker, he or she will help you with this, if necessary. If you do think that you have no option but to make an application to the court I would strongly advise you to go and see a solicitor first. I'm sure that the guardian or your advocacy worker will help you find one.

J, I would really like you to give this guardianship a go and do your best to get on with your guardian and his staff. I'm sure that if you do, it will make your life a lot better even if you might not think so at the start. I was thinking

of granting the guardianship for the limited period of 1 year for a start but I don't want you to have to go through the stress of a renewal process too soon. In the end, I have decided to grant it for the 3 year period that the council requested. This is a reasonable period to let you settle in and hopefully come to realise and accept the overall benefit that the guardianship offers you. You will get your say again when the guardianship order comes up for renewal. Hopefully things will have improved greatly for you by then.

It will be another sheriff who will make any future decisions in your case because I will be retiring soon. But, I want to take this opportunity to wish you all the best for the future. I really hope that things turn out good for you and I am counting on you to do your very best to make this all work."