

GUARDIANSHIP POLICY

Mental Health Act 1983

Document Control Sheet

| Owner | Role | Date of Issue | Version |
|--------------|---------------------------------------|---------------|---------|
| Marie Staves | Strategic Lead Mental Health Services | 22.10.2021 | V1 |

Document

Location:

Revision

History:

| Summary of Changes | Author (s) | Date | Version |
|--------------------|------------|------|---------|
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Approval:

| By | Date | Signature | Version |
|-----------------------------|------------|-----------|---------|
| Directorate Leadership Team | 07.09.2021 | | V1 |

Distribution:

Review:

| Date Review Due | Comments |
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1. INTRODUCTION

This document sets out the policy and procedure relating to the use of Guardianship. It is the intention of this policy to provide clear guidance, encourage best practice and promote the rights of the individual subject to a guardianship application and their nearest relative

Guardianship sits uniquely amongst other sections of the Mental Health Act (MHA), not only because its focus is on enabling individuals to live as independently in the community as possible, but also because the responsibility for its application lies with the local authority.

2. PURPOSE

This document replaces existing guidance and addresses the requirements of the Mental Health Act Code of Practice 2015, and the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 and it is intended to:

- provide guidance to Approved Mental Health Professionals and Responsible Clinicians in their consideration of whether to make a guardianship application, and staff who may be required to contribute to the decision-making with respect to the process or subsequent renewal and/or discharge of guardianship,
- identify the procedure with respect to receipt of applications, renewal, and discharge, and;
- Enable those with responsibility associated with guardianship to fulfil those duties in line with the MHA 83, Code of Practice, and the associated Regulations.

3. SCOPE

This policy is relevant for all Approved Mental Health Professionals and Responsible Clinicians, who may be required to assess an individual under guardianship. It also applies to qualified and registered staff of Rotherham Metropolitan Borough Council who could be required to consider an application for guardianship or deliver services related to guardianship, including RDaSH Mental Health Act administrators who process the documentation on the local authority's behalf.

4. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

Rotherham Metropolitan Borough Council

The Director of Adult Social Services will act as the named guardian, whenever, the local

authority takes on this responsibility.

AMHP Lead

AMHP Lead is accountable for the provision and review of this policy, ensuring that all Approved Mental Health Professionals are informed of the policy and receive sufficient training and support to undertake their role.

Individual Responsibility

It is each Approved Mental Health Professional and Responsible Clinicians responsibility to ensure that they are familiar with the contents of this policy.

Note: Reception into guardianship will not be agreed until a care coordinator has been allocated and satisfactory arrangements have been made for the person's community care.

Mental Health Act Office

It shall be the responsibility of the Rotherham Doncaster and South Humber Foundation Trust's (RDaSH) Mental Health Act office to receive the completed guardianship documentation and update and maintain the guardianship register on behalf of the Local Social Service Authority.

5. GUARDIANSHIP- A PRACTICAL GUIDE

Guardianship provides an authoritative framework for working with a person, with the minimum of constraints, to achieve an independent life as possible within the community. Where guardianship is used, it should be part of the person's overall care plan (COP 30.4).

Guardianship must not be used to impose restrictions that amount to a deprivation of liberty¹. There is no guardianship power which permits the guardian or Local Authority to deprive a person of their liberty at a specified place of residence. If the person is 16 years or over and lacks capacity to decide where to live it may be necessary to consider:

- a) a deprivation of liberty authorisation in respect of the hospital or care home placement, or
- b) in respect of other community settings, if the person is 16 years or over, an application to the Court of Protection will need to be considered

Although guardianship and the Deprivation of Liberty Safeguards can run parallel alongside each other, consideration should be given to whether guardianship remains appropriate, bearing in mind the need to apply the least restrictive option and maximising the independence principle².

¹ MHA Code of Practice, Chapter 30 para. 30.4 & 30.5

² MHA Code of Practice, para. 1.2-6; para. 30.2-30-7

Guardianship does not give anyone the right to treat a person without their permission or to consent to treatment on their behalf (COP 30.6).

Note: while the reception of a patient into guardianship does not affect the continued authority of an attorney or deputy appointed under the Mental Capacity Act (MCA), such attorneys and deputies will not be able to take decisions about where a guardianship patient is to reside, or take any other decision which conflicts with decisions made by the guardian³.

5.1 Procedure for Guardianship Applications

This procedure focuses specifically on the Approved Mental Health Professionals role in the application under guardianship, although it acknowledges that a guardianship application can also be completed by the persons nearest relative.

As with any other application under the MHA 83, both the Approved Mental Health Professional and the Responsible Clinician should consider whether the objectives of the proposed guardianship application could be achieved in another, less restrictive way, for example under the MCA Deprivation of Liberty Safeguards.

The AMHP must not assess and subsequently make an application for guardianship if she/he is subject to a conflict of interest and an alternate AMHP must found (See figure 37 of the Mental Health Act Reference Guide for examples of a conflict of interest)

Any decision to undertake an assessment of a person under guardianship should ensure that an Approved Mental Health Professional is included, as early as possible in the multidisciplinary case discussion.

In addition to the above, the Approved Mental Health Professional **MUST** discuss the proposed application under guardianship with the:

- **AMHP Lead** before the assessment is started to ensure that guardianship is appropriate and that where an application under guardianship is made, that the local authority will receive the person into guardianship
- **Nearest Relative** and inform them of their rights. This formal consultation has two objectives:
 - a) to provide and gather information to assist in the decision-making process, and
 - b) to ensure that the nearest relative is provided with the necessary information on which they can decide whether or not they wish to object to the application being made.

If the nearest relative objects to the guardianship application, then the application cannot proceed. In these circumstances the Approved Mental Health Professional will have discuss the case with the AMHP Lead and the local authority legal team to establish if there is sufficient evidence to support an application to the Court to displace the nearest relative⁴.

³ MHA Code of Practice, para. 30.7

⁴ MHA 1983, s.29.

Where an application under guardianship is made the Approved Mental Health Professional must:

- record that the nearest relative does not object to the application
- record that they have been informed of their rights
- ensure that the two written medical recommendations are in the prescribed form, which in each case should state that, in the opinion of the assessing doctor, the statutory conditions for guardianship are met, and
- provide a comprehensive care plan, which is based on the multidisciplinary discussion and in accordance with the care programme approach (or its equivalent) (COP 30.20)
- provide a guardianship report (Appendix 3)
- A record must be kept that the individual has been provided with information both in writing and orally as to how they can challenge guardianship.

5.2 The Care Plan

Prior to the completion of the assessment under guardianship a care plan which identifies the services needed to support the guardianship order and who will provide them. It should also indicate which of the powers under guardianship are necessary.

5.3 Reception into Guardianship

On completion of the statutory documentation identified above, the Approved Mental Health Professional must take the application; medical recommendations and associated documentation in the first instance to the RDaSH Mental Health Act office for scrutiny (see Appendix 1).

Following this an appointment should be made with the Director of Adult Social Services or Nominated Deputy, who will together with the Approved Mental Health Professional, review the application and the care plan. Once satisfied that the guardianship order is appropriate the Director of Adult Social Services or Nominated Deputy will formally receive the person into guardianship on behalf of the Local Social Service Authority.

The Approved Mental Health Professional will ensure that the person is reminded of their right to appeal and how to access the Independent Mental Health Advocate service⁵

5.4 Completed Documentation

⁵ MHA Code of Practice, para. 28.86.

Once the guardianship application is received by the Local Social Services Authority the DASS must record its acceptance on Form G5, which must then be attached to the application.

The Approved Mental Health Professional will ensure that all the original documents (statutory forms and related paperwork) are taken to the RDaSH Mental Health Act office who have the delegated responsibility for the maintenance of the statutory documentation and the guardianship register.

The Mental Health Act administrator will prepare and distribute standard letters which:

- advise the patient of their rights under guardianship, its duration, specific requirements, and the name of the person acting as the guardian
- inform the nearest relative that the application has been accepted and informed them of their legal rights
- inform the CPA care coordinator, allocated social worker and Responsible Clinician that the guardianship application has been received by the Local Social Services Authority.
- The Mental Health Act administrators will also ensure that the guardianship renewal reminder system is maintained.

5.5 Appeal to 1st Tier Tribunal - Mental Health Review Tribunal

Whenever a person has been accepted into guardianship, they will be informed of their rights to appeal and advised as to their right to access advocacy. Where the person wishes to appeal against their detention, they must notify the RDaSH Mental Health Act Office administrator who will process the application on the behalf of the Local Social Service Authority and coordinate the tribunal hearing. The person should be provided with a list of solicitors

5.6 Renewal of Guardianship

A Guardianship authority initially lasts for six months, renewable for a further six months and then every 12 months. These periods run from when a person is first received into guardianship or where a person is transferred into guardianship under s. 19 MHA 83.

The Mental Health Act administrator will issue a reminder to the Responsible Clinician and the Approved Mental Health Professional 2 months prior to the expiry of the guardianship order.

Guardianship renewal should be considered as part of the care planning process. A multidisciplinary meeting should be convened by the care coordinator. The objective of the review is to reassess the purpose of the guardianship authority and all professionals

involved in the person's care should be present at the review including the Responsible Clinician. The patient subject to guardianship and the nearest relative should also be invited. If renewal is considered appropriate the Approved Mental Health Professional in partnership with the care coordinator must provide a renewal report and a revised care plan. This report should include:

- the original reason for the application and the requirements
- how the requirements have been implemented over the last period of the guardianship authority
- the effect on the patient and their views
- the views of the nearest relative and relevant others
- update on the patient's mental health and assessment of needs including risk assessment
- current circumstances
- proposed conditions for renewal which meet the criteria for guardianship
- reasons why the guardianship order should continue and is necessary

Where the Responsible Clinician or the nominated medical attendant (in the case of a private guardian) are of the opinion that the conditions continue to be met, they must submit a report to that effect, using Form G9 to the Local Social Services Authority or the private guardian. The Local Authority must then record the receipt of the report in Part 2 of the same Form (G9). The effect of this report is to renew the authority for guardianship.

The Local Social Service Authority must record the receipt of the report.

Where the guardianship is renewed and following receipt the Approved Mental Health Professional should ensure that the documentation is received by the RDaSH Mental Health Act office administrator.

The Approved Mental Health Professional will ensure that the person is reminded of their right to appeal both in writing and orally, The AMHP must also advise the person and how to access the Independent Mental Health Advocate service.

5.7 Discharge from Guardianship

Discharge from guardianship should always be considered as part of the care planning process, allowing a guardianship order to lapse is not good practice.

Where it is established that guardianship is no longer necessary:

- **The Responsible Clinician** must make a written order of discharge and send a copy of this to the guardian (Local Social Service Authority for private

guardian). The guardianship order will end on the date that the Responsible Clinician signs the discharge form; (appendix 2) **or**

- **The Local Social Service Authority** can make a written order of discharge. However, this decision cannot be taken by an individual officer, it must be a majority decision by a committee or subcommittee set up for the purpose.

The nearest relative can also put a written request before the Local Social Service Authority for the discharge of the person. Such a decision by the nearest relative is absolute and cannot be barred. However, where there are concerns that the nearest relative is placing the person or others at risk, this request could be used as evidence to support the displacement of the nearest relative.

Note: a nominated medical attendant for a guardianship order, where the guardian is not the Local Social Service Authority is not authorised to discharge guardianship; nor does the private guardian have that authority.

5.8 Absent Without Leave [section 18 MHA 83]

If a person who is subject to guardianship becomes absent without leave from the place where they are required to reside, they may be “taken into custody” and returned to that place by any officer of the staff of a Local Social Service Authority; any constable (police officer) or by any person authorised in writing by the Local Social Service Authority.

Where access is denied to a person who is absent without leave consideration may need to be given to the need to apply for a warrant under section 135(2) (please refer to the section 135 policy).

If the person returns or is returned after being absent for more than 28 days, but still within the duration of the guardianship order the Responsible Clinician must examine the person within seven days of the “return” day and complete the appropriate documentation. If this examination takes place within two months of the expiry of the guardianship order, the Responsible Clinician must state whether their report constitutes a request for a renewal of guardianship.

If the person does not return or is not returned under section 18 of the Mental Health Act before the expiry of the current guardianship authority, the guardianship authority cannot be renewed.

5.9 Section 19 Transfers from Hospital to Guardianship

Authorisation for the transfer of a person who is in hospital into guardianship needs the agreement of the Local Social Service Authority prior to the transfer. Therefore, **consultation with the AMHP Lead must take place before the section 19 transfer is completed.**

Where a person is being considered for a section 19 transfer on to guardianship there is a requirement that they must be currently detained in hospital under section 2 or section 3 of the Mental Health Act. Section 19 transfers do not require a guardianship application completed by the Approved Mental Health Professional, nor are new medical recommendations required.

Note: that a transfer from section 3 into guardianship will not be accepted if the authority has less than two months to run. In these circumstances a new assessment by an Approved Mental Health Professional and two doctors (one of whom must be section 12(2) approved) should be undertaken.

A report detailing the identification of the mental disorder, the reasons why guardianship is necessary and appropriate, and a detailed care plan should also be completed.

The Local Social Service Authority must also receive the person into guardianship (process identified above at paragraph 5.3)

Any guardianship authority under section 19 will cease (unless reviewed) at the end of the period of compulsory detention, which would have been applicable had the person continued to be subject to either section 2 or section 3 of the Mental Health Act 1983.

5.10 Guardianship Order Under 37

Where any member of staff is made aware that a Court is considering section 37 guardianship as possible Court disposal, the AMHP Lead should be advised immediately.

The AMHP Lead will discuss the case with the relevant Team Manager and the Approved Mental Health Professional and agree a plan to bring sufficient information together to enable the Local Social Service Authority to make a decision regarding accepting the guardianship order. This information should include any psychiatric assessment reports prepared for the Court.

The Approved Mental Health Professional will attend the Court hearing and present the Local Authority's response.

Note: the same considerations apply for the acceptance of a person into guardianship under section 37, as apply to guardianship under section 7 of the Mental Health Act. If none of the powers provided for within guardianship are required, then the proposed guardianship under section 37 will not be accepted.

The main difference between applications for guardianship under section 7 and section 37 of the Mental Health Act is that the nearest relative may not discharge patients from guardianship under section 37. The nearest relative does have rights to apply to the tribunal instead.

5.11 Duties of the Guardian

Where the Local Social Service Authority is the guardian in practice these duties will be delegated to an allocated worker, who is usually the Approved Mental Health Professional and their duties are to:

Monitor, coordinate and review the requirements of the guardianship and the CPA care plan

Visit at least once every three months (good practice indicates more frequent visits)

Ensure that medical examinations take place according to the guardianship Regulations, including ensuring that the Responsible Clinician examines the service user subject to guardianship during the two months before that authority expires

Hold a regular review at least once during each period of guardianship and ensure detailed records of all actions taken relating to the person subject to guardianship are maintained.

Where the care coordinator is not an Approved Mental Health Professional, they should ensure that arrangements are made for an Approved Mental Health Professional to be present at the review.

APPENDICES

SCUNTINY OF GUARDIANSHIP

Patient Name:

Date of Guardianship:

| | | YES | NO | Comments |
|---|--|-----|----|-------------------------------------|
| 1 | Is this a Guardianship Renewal – Form G9 *if yes, please continue to include point 7 *if no, please begin at point 3 | | | |
| 2 | What date is the Guardianship due to expire: | | | Date: |
| 3 | Is there a comprehensive written AMHP report attached? | | | |
| 4 | Is there an up to date Care Plan attached? | | | Date of Care plan: |
| 5 | Is there an up to date Risk Assessment attached which clearly identifies which of the provisions apply for the Guardianship? | | | Date of Risk Assessment: |
| 6 | Is the documentation signed and dated? | | | |
| 7 | Confirm who has signed and dated the paperwork – is it the RC or a Nominated Medical Attendant? | | | RC – Y/N Medical Attendant – Y/N |
| 8 | Confirm which forms been completed for the new Guardianship below | | | |
| | Form G1 – application by Nearest Relative | | | |
| | Form G2 – application by AMHP | | | |
| | Confirm that the AMHP Application or the Nearest Relative Application has been completed within 14 days of the first Medical Recommendation | | | |
| | Form G3 – Joint Medical Recommendation | | | |
| | Form G4 – Single medical Recommendation (requires x2 – reasons for the reception into Guardianship must be the same) | | | |
| | Confirm that the Medical Recommendations x 2 are no more than 5 clear days apart. ** this is the date of the examination not the date of the forms | | | |
| 9 | Confirm if One Doctor is Section 12(2) approved | | | |

Community RC:

| | | | | |
|----|--|--|--|--|
| 10 | Confirm if the 2 nd Doctor is the patients GP **If not another Section 12(2) Doctor is required | | | |
| 11 | Is the 2 nd Doctor Section 12(2) Approved? | | | |
| 12 | Does the 2 nd Doctor know the patient? | | | |
| 13 | If the 2 nd Doctor does not know the patient is there an explanation why not? | | | |
| 14 | Form G6 – transfer from Hospital into Guardianship | | | |
| 15 | Confirm the demographics below - | | | |
| | Is the Patients name the same on all of the paperwork? | | | |
| | Is the patients address the same on all of the paperwork? | | | |
| | Is the postcode the same on all of the paperwork? | | | |

Scrutinised by:

Job Title:

Date:

APPENDIX 2

[Name of Responsible Clinician]

[Address]

[Name of Director]

Director of Social Services

[Address]

Date

Dear

Re: NOTIFICATION TO LOCAL SOCIAL SERVICES AUTHORITY OF DISCHARGE OF GUARDIANSHIP ORDER

Re: *[Patients Name and Address]*

I hereby notify *[name of local authority]* that following a review of *[patient's name]* care it has been established that Guardianship is no longer required on the grounds that

[Please detail here the basis for the decision to discharge Guardianship]

Yours sincerely

Signature

Designation

**GUARDIANSHIP APPLICATION
APPROVED MENTAL HEALTH PROFESSION REPORT**

| | |
|--|-----------------------|
| Patient's Name: Address: | Date of Birth: |
| | Legal Status: |
| Nearest Relative: | Address: |
| | Telephone No: |
| Responsible Clinician: | Address : |
| | Telephone No: |
| Care Co-ordinator: | Address: |
| | Telephone No: |
| Approved Mental Health Professional : | Address: |
| | Telephone No: |
| 1. Background Information | |
| 2. Circumstances Surrounding Referral For Guardianship | |
| 3. Discussion with Patient: | |
| 4. Discussion with Nearest Relative <i>(including confirmation that they do not object to the Guardianship application and that they are aware of their rights)</i> | |
| 5. Discussion with Assessing Doctor/s: | |

6. Discussion with Professionals (including Care co-ordinator)

7. Risks Identified:

8. Requirements of Guardianship:

- i. Requirement to reside at XXXXXXXX. This requirement will provide XXXXXX
- ii. Requirement to allow access to XXXXXXXXX. This requirement will provide
- iii. Requirement to attend XXXXXXXX. This requirement will provide

[Patient's Name] is suffering from a mental disorder of a nature or degree which warrants his/her reception into guardianship under section 7 of the Mental Health Act 1983. It is my opinion that the application is necessary in the interests of the welfare of *[patient name]* and /or for the protection of other persons, that the patient should be so received.

Signature

Date

Print Name