
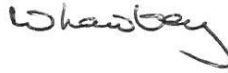


Adults and Community Wellbeing Mental Health Guardianship Practice Guidance Section 7, Mental Health Act 1983

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1. Introduction

The document sets out the practice guidance relating to the use of section 7 of the Mental Health Act 1983 (Guardianship). North Lincolnshire Council view the use of guardianship as one of the least restrictive options available to enable people to live in the community, whilst subject to the minimum of constraints provided under the jurisdiction of the Mental Health Act 1983.

The Mental Health Act 1983 Code of Practice chapter 30 – 31 (Guardianship and leave of absence or Community Treatment Order) gives detailed guidance on the use of guardianship and deciding between this and other powers within the act for unrestricted people.

The powers of guardianship should only be considered if there are clear benefits for the person and not as a last resort. It does not permit a deprivation of a person's liberty.

This practice guidance applies to all North Lincolnshire Council Approved Mental Health Professionals (AMHPs), who may be required to assess a person under section 7 of the Mental Health Act. It also applies to all employees in North Lincolnshire Council who may be required to act as a guardian on behalf of the Local Authority or fulfil the Local Authorities duties towards a private guardian, including staff who could be required to consider applications for and renew guardianship and delivery of services related to guardianship.

1.1. Legislation/policies/documents

- [Mental Health Act 1983](#)
- [Mental Health Act 1983 Code of Practice 2015](#)
- [Reference Guide to the Mental Health Act 1983 \(2015\)](#)
- [The Mental Health \(Hospital, Guardianship and Treatment\) \(England\) Regulations 2008](#)
- [The Human Rights Act 1998](#)
- [Mental Capacity Act 2005](#)
- [Care Act 2014](#)
- [Practice Guidance Appointment by the Court of Acting Nearest Relative G44](#)
- [Practice Guidance Section 135\(1\) Mental Health Act 1983.](#)

1.2. Legal context

Section 7 – 10 of the MHA 83, sets out the legal framework for applications for Guardianship, its effects, regulations and transfer of guardian.

Section 18(3) gives the power to take a person subject to guardianship into custody and return to the place they need to reside by an officer or staff of the local authority, or any person authorised in writing by the guardian.

Section 18(7) gives power to initially take persons subject to guardianship to the place where they are expected to reside.

Section 19 sets out the regulations for the transfer of a person into guardianship from detention in hospital under the Act.

Section 20 sets out the framework for the renewal or expiry of guardianship.

Section 21, 21A, and 21B considers the arrangements for persons who are absent without leave (AWOL) from the place where they are required to reside.

Section 23 sets out the process for the discharge of a person from guardianship.

The Mental Health (Hospital, Guardianship and Treatment) (England)

Regulations 2008 sets out the requirements for the procedure for and acceptance of guardianship applications (5), Transfer from hospital to guardianship (7), Transfer from guardianship to guardianship or Hospital (8), Transfers from England to Wales and Wales to England (10), Conveyance to hospital on transfer from hospital or guardianship (11), Renewal of authority for guardianship (13), Absence from leave for more than 28 days (14) and Removal to England where a person is received into guardianship (15).

The Mental Health (Hospital) (England) Regulations 2008 sets out the duties of private guardians (22) and Visits to patients subject to guardianship (23).

1.3. Responsibilities, accountabilities and duties

Local social services authorities

The Director of Adult and Community Wellbeing Services, or the nominated deputy, will act as the named guardian whenever the local authority takes on this responsibility. The guardian may also be an individual ('a private guardian'), such as a relative of the patient. In this case, it is the responsibility of the local authority where the private guardian resides to approve them to act in this role and also to ensure their suitability and that they are able to understand and carry out their responsibilities under the Act.

It is also the responsibility of the local authority to maintain the guardianship register and nominated employee to ensure statutory procedures are followed, including, in consultation with others, the arrangements for regular reviews and discharge of guardianship when appropriate. The care plan should include arrangements and timescales for visiting the person subject to guardianship.

Team manager/ AMHP lead

The Team Manager/ AMHP Lead is accountable for ensuring that all AMHPs are adhering to this practice guidance and receive sufficient training and support to undertake the role.

Approved mental health professional.

It is the AMHP's responsibility to ensure that they are familiar with, and work to, the contents of this practice guidance.

Private guardians

A private guardian is defined as 'a person, other than a local social services authority, who acts as a guardian under the Act' (Regulations 2(1)). This would usually be a family member. Should a private guardian be proposed, their suitability to take on this role should be assessed. It is the local authority of the area in which the private guardian resides who is responsible for completing this assessment and approving them to act as a Private Guardian (28.19 MHA Reference Guide).

Private guardians have the following duties (Regulations 22(1)):

- To appoint a registered Medical Practitioner to act as the Nominated Medical Attendant. This person is responsible for examining the person for the purpose of renewing guardianship. This could be the person's GP.
- To notify the responsible Local Authority of the name and address of the Nominated Medical Attendant
- To exercise the powers and duties of the private guardian and to comply with directions given by the Local Authority
- To furnish the Local Authority with reports and other such information about the person which the Local Authority may require
- To notify the Local Authority of their address and that of the person
- To notify the Local Authority of any permanent change in either address before, or no later than 7 days after the change
- Where the private guardian has a permanent change of address which falls within another Local Authority area, they are required to notify the new Local Authority of their new address and that of the person, the name and address of the Nominated Medical Attendant and notify the previous Local Authority of their change of address
- In the event of the death of the person, the termination of the guardianship by discharge, transfer or otherwise, the private guardian must notify the responsible Local Authority as soon as is practicable

The powers of the guardian (local authority or private guardian):

- To require the person to reside at a place specified by the authority or persons named as a guardian.
- To require the person to attend at places and times so specified for the purpose of medical treatment, occupation, education or training.

- To require access to the person to be given, at any place the person is residing to any registered medical practitioner, AMHP or other person so specified.
- Take the person for the first time to the place they are required to live if the person does not (or cannot) go there without assistance.
- Take legal custody and return the person to the place where they are required to live, if they leave the address without the agreement of the guardian.

2. Guidance

This practice guidance focuses specifically on the AMHP's role in the application under guardianship. An application for guardianship can also be completed by the person's Nearest Relative (NR).

Any decision to request an assessment of a person under guardianship should ensure that an AMHP is included, as early as possible in the multidisciplinary case conference relating to the possible use of guardianship.

The AMHP must consult with the NR and inform them of their rights including whether or not they have any objections to the application being made. If an objection is made, the AMHP may have to consider if there is sufficient evidence to support an application to the court to displace the NR (S29 MHA 83.).

Where an application under Guardianship is made by an AMHP it must be supported with:

- Mental Health Act assessment report on Care First
- Guardianship Application ([Form G2](#))
- Medical recommendations ([Form G4](#))
- Care Act Assessment
- Care Plan
- Risk Assessment
- Summary Report for the Director of Adult Social Services / nominated deputy ([Appendix 5](#)) – this should include the reasons for the guardianship and why the care plan cannot be delivered without the statutory requirements.

Please refer to the checklist at [Appendix 1](#) to ensure that all is completed.

2.1. Reception into guardianship

On completion of the statutory documentation identified above, the AMHP must arrange an appointment with the director of Adults and Community Wellbeing or nominated deputy to present the application. This must be within 14 days of the AMHP assessing the person. Applications which nominate a private guardian will also need to be accepted by the responsible local authority.

Once accepted the director of Adult and Community Wellbeing or nominated deputy will formally receive the person into guardianship on behalf of the local social service authority ([Form G5](#)).

The AMHP will ensure that the person is reminded of their right to appeal and how to access the Independent Mental Health Advocacy (IMHA) service.

2.2. Completed documentation.

The AMHP will ensure that all of the original documents (statutory forms and related paperwork) are taken to the administration officer at the Mental Health Social Work Team who has the responsibility for the maintenance of the statutory documentation and the guardianship register.

The AMHP will also prepare and distribute letters which:

- Advise the person of their rights under guardianship, its duration, specific requirements, and the name of the person acting as the guardian (see [Appendix 2](#) for an example).
- Inform the NR that the application has been accepted and informed them of their legal rights (see [Appendix 3](#) for an example).
- Inform the Care Programme Approach (CPA) care coordinator, allocated social worker and responsible clinician that the guardianship application has been accepted by the local authority (see [Appendix 4](#) for an example).

2.3. Duties of the guardian

Where the local authority is the guardian, in practice, these duties will be delegated to a social worker, who will:

- Monitor, coordinate, and review the requirements of the guardianship and the care plan.
- Visit at least every three months (good practice indicates more frequent visits, e.g., monthly if possible).
- Ensure that medical examinations take place according to the guardianship regulations, including ensuring that the responsible clinician examines the person 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 social worker is not an AMHP, they should ensure that arrangements are made for an AMHP to be present at the review.

2.4. Appeal to first tier (mental health) tribunal

Whenever a person has been accepted into guardianship they will be informed of their rights to appeal, both verbally and in writing. Where the person wishes to

appeal against their detention, they may either contact their solicitor or notify the administration officer at the Mental Health Social Work Team who will process the application and coordinate the tribunal hearing. A list of solicitor's phone numbers can be obtained from the Mental Health Act Office at Great Oaks and provided to the person appealing the guardianship order.

The local authority is to refer patients to the Tribunal Service even if they have not expressed a wish to appeal if three years have passed since their case was last considered by the Tribunal Service.

The administration officer should inform the First Tier Tribunal Office by completing a [T116 form](#) (Guardianship-Application to First-Tier Tribunal (Mental Health) Mental Health Act 1983 (as amended)). The administrator will also be required to arrange and confirm the venue once a date for the hearing is received.

The following documents are required for the hearing within twenty one days

- Mental Health Report completed by the Responsible Clinician (RC) - [Form T139](#).
- Social Circumstance Report completed by the Social Worker or AMHP- [Form T141](#).
- Statement of Information completed by the guardian - [Form T140](#).
- Non-Disclosure – As specified under Rule 14(2), any part of the above report which, in the opinion of the author, should be withheld from the patient or the applicant should be submitted separately, headed “Not to be Disclosed”. The author should provide reasons why they consider its disclosure will be likely to cause that person or some other person serious harm. This will need to be completed on [Form T113](#) Case Management Request Form. The final decision on the disclosure of information rests with the Tribunal.

An electronic copy of the medical recommendation, AMHP assessment report should be sent to the person's solicitor. The solicitor may submit a request to see the records. A copy of all reports needs to be sent electronically to the Tribunal Service, including the Statement of Information to be sent to the patient's solicitor.

2.5. Renewal of guardianship

A guardianship order 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 administration officer will keep a record of guardianships and issue a reminder to the named guardian two months prior to the expiry. The AMHP who completed the initial guardianship application must also enter a review requirement on Care First two months prior to the expiry.

Guardianship renewal should be considered as part of the care planning process. A multidisciplinary case conference should be convened to reassess the purpose of the guardianship order and all professionals involved in the person's care should be present at the review including the responsible clinician. The person subject to guardianship and the NR should also be invited. If renewal is considered the allocated guardian/ social worker should complete an updated summary report and care plan for the AMHP. 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 order
- The effect on the person and their views
- The views of the NR and relevant others
- Update on the person's mental health and assessment of needs including risk assessment
- 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 \(Part 1\)](#), to the local social services authority or the private guardian.

The allocated AMHP must arrange an appointment with the Director of Adults and Community Wellbeing or nominated deputy to present the renewal application.

Once accepted the Director of Adult and Community Wellbeing s or nominated deputy will formally receive the person into guardianship on behalf of the local social service authority ([Form G9 Part 2](#)).

The allocated AMHP will ensure that the person is informed of the decision and reminded of their right to appeal and how to access the Independent Mental Health Advocate Service (verbally and in writing). They must also update the NR on the outcome. They will then ensure that the documentation is received by the administration officer at the mental health social work team.

2.6. 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 authority for private guardian). The guardianship order will end on the date that the responsible clinician signs the discharge request or

- **North Lincolnshire Council** 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 or
- **The nearest relative (NR)** can put a written request before the local authority for the discharge of the person. Such a decision by the NR is absolute and cannot be barred. However, where there are concerns that the NR is placing the person or others at risk, this request could be used as evidence to support the displacement of the NR.

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.

2.7. Absent without leave [s 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 North Lincolnshire Council; any constable (police officer) or by any person authorised in writing by the local 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 Practice and Practice Guidance for Section 135(1)).

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 order, the guardianship order cannot be renewed.

2.8. 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, the same process will be required as if this was a new application. However, 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 AMHP, nor are new medical recommendations required ([Form G6](#)).

A transfer from section 3 into guardianship will not be accepted if the order has less than two months to run. In these circumstances a new assessment by an AMHP and 2 doctors (one of whom must be section 12(2) approved) should be undertaken. Any guardianship order 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

Transfer to a private guardian or to another local authority.

The guardianship of a person may be transferred to a new guardian if the following requirements are met:

- The current guardian gives authority for the transfer using [Form G7](#)
- the local authority which will be the responsible local authority after the transfer (which might be the current local authority if the transfer is to a private guardian who resides in their area) approves the transfer, and specifies a date for the transfer to take place, and
- If the new guardian is to a private guardian, the new guardian signs the form to record his or her agreement.

2.9. Guardianship order under section 37 of the Mental Health Act

Where any member of staff is made aware that a court is considering section 37 guardianship as possible court disposal, the Team Manager/ AMHP Lead or nominated deputy should be advised immediately.

The Team Manager/ AMHP Lead will discuss the case with the relevant team manager and the AMHP and agree a plan to bring sufficient information together to enable the local authority to decide regarding accepting the guardianship order. This information should include any psychiatric assessment reports prepared for the court.

The AMHP will attend the court hearing and present the local authority's response.

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 NR may not discharge people from guardianship under section 37 but has the right to apply to the tribunal.