

Guardianship Policy – Mental Health Act 1983

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Related Documents

Reference	Title	Tier

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1. The purpose of this policy

- To give guidance to the relevant agencies and professionals working in West Berkshire on the appropriate use of guardianship.
- To encourage the appropriate use of guardianship.
- To specify procedures to be followed using guardianship.
- To ensure consistent use of guardianship across West Berkshire Council and between the relevant agencies and professionals.
- To bring the possible use of guardianship to the attention of those professionals who do not specialise in mental health and may not know about the [Mental Health Act 1983](#).
- To comply with paragraph 30.16 of the [Mental Health Code of Practice \(CoP\)](#).

2. The limitations of this policy

- 2.1. This policy does not attempt to answer all the questions that may need to be considered when using guardianship. It attempts to provide a framework for professional decision making.
- 2.2. This policy is not a definitive statement of good practice in this area but represents a local interpretation of the Mental Health Act 1983 as amended by the Mental Health Act 2007. It should be used alongside other guidance (e.g. Jones and updates from the Institute of Mental Health Law).

3. The legal background

- 3.1. Part II of the Mental Health Act 1983 sets out the civil powers which allows for a patient to be received into guardianship (section 7).
- 3.2. There are also criminal powers which allow a Guardianship Order (section 37) to be used by a court in dealing with a mentally disordered offender.
- 3.3. The powers under sections 7 and 37 are broadly similar. The differences are discussed later in this document.
- 3.4. In addition to the Act itself, legal guidance is provided by the Code of Practice (CoP) which was last revised in 2015 especially in Chapter 30.
- 3.5. Patients for whom guardianship is being considered have a number of rights under the European Convention on Human Rights. These include the right to a fair hearing in the way that local authorities (and other public bodies) make their decisions (Article 6), the right to respect for private and family life (Article 8) and the right not to be subjected to discrimination on any ground in the way they access other human rights under the Convention (Article 14).

4. The purpose of guardianship

- 4.1. The purpose of guardianship is to enable patients to receive community care where it cannot be provided without the use of compulsory powers. It enables the establishment of an authoritative framework for working with a patient with a minimum of constraint to achieve as independent a life as possible with the community. Where it is used it must be part of the patients overall care and treatment plan (Code of Practice 30.2 and 30.4).

Guardianship must be viewed as an integral part of care planning whether or not the patient has been treated in a psychiatric hospital.

5. The requirements that have to be met before reception into guardianship

- The patients is aged 16 years or over.
- That the patient is suffering from a mental disorder as defined in Section 1 Mental Health Act 1983 as “any disorder or disability of the mind”.
- If the patient has a learning disability, the learning disability is associated with abnormally aggressive or seriously irresponsible conduct.
- That the nature or degree of the mental disorder warrants reception into guardianship.
- That it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient be received into guardianship (see section 7 of MHA).

6. The process of applying for guardianship

6.1. The application

An application for guardianship is based on:

6.1.1. Two medical recommendations, one by a doctor approved under section 12 of the Mental Health Act and the other by a registered medical practitioner (usually the patients General Practitioner).

6.1.2. An application founded on the two medical recommendations. This application can be made by an Approved Mental Health Professional (AMHP) or the Nearest Relative (NR). The CoP states that an AMHP is usually the more appropriate applicant (CoP 14.30).

6.1.3. Consultation with the Nearest Relative.

6.2. Applications for guardianship should follow the fullest discussion within the multi-disciplinary team, involving the patient’s relatives and any other relevant agencies and be supported by a comprehensive care plan (CoP 30.20/30.21).

6.3. The application must be received by the Local Social Services Authority within 14 days of the second medical examination on which the medical recommendation is based (see section 8 MHA). This includes the day of the examination i.e. the day of the examination is day one.

6.4. The same conditions for the correction of “rectifiable errors” in the recommendations and applications apply as to other sections of the Mental Health Act as set out in section 15.

6.5. Consultation with the Nearest Relative

- 6.5.1. The AMHP must consult with the Nearest Relative before making the application, unless this is not reasonably practicable or would result in an unreasonable delay. What constitutes being not reasonably practicable or unreasonable delay is for the AMHP to decide taking into account the assessed needs of the patient, any risk issues either to the patient or to other people and how quickly the guardianship needs to be put in place, along with the current case law and guidance. For guidance about definition, powers and responsibilities of the Nearest Relative please see the West Berkshire Council Nearest Relative Policy, 2019.
- 6.5.2. The Nearest Relative should be interviewed by the applicant AMHP face-to-face. If distance or urgency make this impossible, the benefits and drawbacks should be considered in the individual case of a) the AMHP writing to and telephoning the Nearest Relative themselves and b) arranging for another AMHP based closer to the Nearest Relative to carry out a consultation interview. Consultation with the NR should begin as soon as guardianship comes under consideration. NR's should be given time to reflect on their decision and should be urged to seek legal advice.
- 6.5.3. The application cannot be made if the Nearest Relative of the patient has notified either the AMHP or West Berkshire Council that s/he objects to the application being made.
- 6.5.4. In some circumstances it may be necessary to override the Nearest Relative's objection. Advice on this needs to be sought from an AMHP, the AMHP lead or the Community Mental Health Team (CMHT) Service Manager with West Berkshire Council Legal Services providing advice and assistance as and when required.

6.6. Applications by the Nearest Relative

- 6.6.1. If the applicant is the Nearest Relative, the AMHP Lead or CMHT Service Manager should appoint an AMHP to assist the Nearest Relative in making the application and the AMHP should prepare a report based on the format used for applications made by AMHP's under the Mental Health Act 1983. This report must be submitted to the Service Director Adult Social Care at West Berkshire Council.

6.7. The stages of an application for guardianship

- 6.7.1. This will be done in collaboration with the relevant multi-disciplinary team in conjunction with the patient's family and carers. The care coordinator involved in the case need not be an AMHP but an AMHP should be invited to the case conference. A psychiatric opinion about the feasibility of guardianship should be sought at this stage. Prior to the case conference, a social circumstances report will need to be drawn up along with a comprehensive risk assessment. The staff in the case conference should draw up a care plan outlining the patients' needs and possible options to meet them. This should include the merits and demerits of reception of the patient into guardianship. Before proceeding to a formal assessment under the Act, the care coordinator will have to have identified a suitable placement. If the AMHP at the case conference feels that reception into guardianship is warranted, they will arrange a formal Mental Health Act Assessment.

6.8. Formal assessment under the Mental Health Act 1983

6.8.1. The AMHP must convene a formal Mental Health Act assessment as set out in the Act with due consideration of the Code of Practice and relevant guidance from the local authority. More details about this are set out below.

7. The effects and powers of guardianship

7.1. Effects of guardianship

7.1.1. Once a person has been received into guardianship, the guardian has certain powers conferred on him/her by the Mental Health Act 1983. These are set out below:

7.2. Who can be guardian?

The following may act as guardian:

- The local authority i.e. West Berkshire Council for people resident within its area. This power has been delegated to the Service Director Adult Social Care.
- Any other person who has given written notice to the local authority of his/her willingness to act and who has been accepted as an appropriate guardian by the local authority by the area in which the proposed guardian resides.

The following cannot act as guardian:

- Medical practitioners who have made one of the medical recommendations.
- Any individual who has not indicated in writing their willingness to act.
- Anyone who has not been approved by their local authority to act as a guardian.
- In respect of a person who is a Ward of Court, no-one can act as their guardian without the consent of the High Court.

7.3. Powers conferred on a guardian

7.3.1. To require the patient to reside at a place specified by the guardian

7.3.2. Guardianship following the implementation of the Mental Health Act 2007 now confers powers to forcibly convey the patient to the place where they are required to reside.

7.3.3. If the patient leaves a place where he/she is required to reside without the guardian's consent s/he can be taken into custody and returned to that place within a period of six months from the date which the absence without leave started or the date on which the guardianship would have ended, whichever is the earlier.

7.3.4. Patients should always be consulted first about where they are required to live, unless their mental state makes this impossible (CoP 30.29).

7.3.5. The power to require patients to reside in a particular place may not be used to require them to live in a situation in which they are deprived of their liberty unless that is authorised separately under the Mental Capacity Act 2005 (CoP 30.31).

7.4. To require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training.

- 7.4.1. If the person refuses to attend such places as required, the guardian does not have the power to use force to secure such attendance. The Act does not enable medical treatment to be administered to someone under guardianship without their consent. However, the professionals involved in the persons care will need to actively persuade and advise the patient to comply with the care plan.
- 7.5. To require access to the patient to be given at any place where the patient is residing to any registered medical practitioner, Approved Mental Health Professional or other person specified by the guardian.
- 7.5.1. A refusal without reasonable cause to permit an authorised person to have access to the patient is an offence (Mental Health Act 1983 s 129). However, guardianship does not allow for the use of force in order to carry out the guardians functions.
- 7.5.2. If it is considered necessary to secure entry, then consideration should be given to an application for a warrant to search for and remove the person under guardianship under section 135(2) of the Act.
- 7.5.3. The police do have the power, in more urgent cases, under section 17(1) of the Police and Criminal Evidence Act 1984 to enter and search any premises to save life or limb or prevent serious damage to property. However this section does not provide the police with authority to remove any person from the premises.
- 7.6. Visiting and monitoring a person under guardianship
- 7.6.1. The nominated person for the authority (usually the care coordinator) should meet with the patient regularly and not less than every three months and continually review their needs and the guardianship order.
- 7.6.2. The patient must be visited once a year by a medical practitioner approved under section 12 of the Act.
- 7.7. Duration of guardianship
- 7.7.1. Reception into guardianship is initially for a period of six months followed by another six months and then yearly thereafter.
- 7.8. Renewal of guardianship
- 7.8.1. Within two months before the expiry of the guardianship, the appropriate Responsible Clinician should examine the patient and, if it is the case prepare a report stating that the patient is still suffering from a mental disorder and that it is in the interest of the welfare of the patient and/or necessary for the protection of others that the patient should remain under guardianship. This should be completed so as to reach the Service Director Adult Social Care in good time before the date of expiry of the guardianship order.
- 7.9. Discharge from guardianship
- 7.9.1. The patient can be discharged from guardianship by:
- The responsible clinician authorised by LSSA
 - The responsible local social services authority
 - The Nearest Relative (in most cases)
 - The Mental Health Review Tribunal

7.9.2. When a guardianship order is imposed by the courts, the nearest relative does not have the power to discharge the order but has the right of appeal to a Mental Health Review Tribunal (MHRT) to request the discharge of the guardianship order. In other respects a discharge under section 37 is the same as a discharge under section 7. If a patient who is subject to a guardianship order under section 37 is admitted to hospital under section 3 or section 37, the clarification of the continuing status of the guardianship order should be sought from the AMHP Lead, CMHT service manager or West Berkshire Council Legal Services.

7.10. Appeal to the Mental Health Review Tribunal (MHRT)

7.10.1. All patients have the right to appeal to the Mental Health Review Tribunal. An appeal can be made in each period of the guardianship order. It is the duty of the AMHP Lead to ensure that the patient is aware of his or her right to appeal to the Tribunal and that assistance is provided to enable the patient to appeal. This should be done both orally and in writing, by the AMHP making the application, to the patient, his/her nearest relative and any advocate. Assistance to appeal should normally be provided by the patients care coordinator.

7.11. Patient's property and finances

7.11.1. Guardianship does not confer any rights to use, control or dispose of the patient's property or carry out any financial transactions on behalf of the patient. If management of the patients financial affairs is required i.e. if the patient is unable, because of mental disorder to manage their property and affairs themselves, then appropriate arrangements should be put into place, including an application to the Court of Protection if appropriate.

7.12. Admission to hospital of patients under guardianship

7.12.1. Guardianship does not restrict the patient's access to hospital services on a voluntary basis. The guardianship order can remain in force if the patient is admitted to hospital voluntarily or under sections 2 and 4 of the Act. However, the guardianship order lapses immediately the patient is detained under section 3 of the Act.

7.12.2. Guardianship cannot be used to require a patient to reside in hospital except in very exceptional circumstances where it is necessary for a very short time in order to provide shelter whilst accommodation is being arranged (CoP 30.35).

8. Duties and tasks of the Approved Mental Health Professional

8.1. The role of the AMHP is to undertake an assessment of the appropriateness of guardianship once the possible need for it has been identified. The assessment should refer to the Act, the Code of Practice, and any legal developments and advice that may be obtained (such as from Jones, the Institute of Mental Health Law, West Berkshire Council Legal Services).

The AMHP will need to explore areas such as:

- Being satisfied that two appropriately qualified medical practitioners (usually the Psychiatrists and General Practitioner) are provisionally prepared to make medical recommendations.
- Identifying a willing and suitable guardian.
- Identifying the nearest relative, other relatives and carers ascertaining their views on the proposal to apply for guardianship.

- Being satisfied that the care plan is consistent with the powers of guardianship as set out in the Act.
- Identifying the worker who will undertake the statutory monitoring and undertake the required visits to the patient.
- Identifying the doctor who will be involved in the care plan, the reviews and renewals, and undertake the annual visits.
- The management of the patient's finances and property.
- Advice from AMHP Lead, CMHT service manager and West Berkshire Council Legal Services as appropriate.

8.2. Preparation of a guardianship report

8.2.1. The AMHP and the care coordinator have discretion to decide the extent to which separate or combined reports are presented. The reports together must include the following information:

- The full name and address of the patient.
- The patient's date of birth.
- The full name and address of the nearest relative.
- If the proposed guardian is a local authority, the name and address of the consultant psychiatrist who will be the responsible clinician.
- If the proposed guardian is a private individual, the name and address of a medical practitioner who would be the nominated medical attendant (CoP 30.25). The doctor's consent to undertaking this task must be recorded.
- A comprehensive assessment of the patient's main areas of risk and need.

8.2.2. The report should specify the powers of guardianship which would be used as part of the care plan:

- **To direct residence:** where the patient will live and the living arrangements.
- **Where attendance is proposed:** the places that the patient will be required to attend and any medical treatment, its nature and frequency (guardianship does not allow for medication to be given without consent).
- **To require access:** a clear indication of why this required and who would be required to have access to the patient.
- Where it is anticipated that it may be necessary to return a patient to the place they are required to live, arrangements for doing this including the person, agency or group of people to whom this authority may be delegated.
- Expected consequences of the reception into guardianship and the possible consequences of a decision not to accept guardianship.
- If the guardian is to be a private individual the report should comment upon that person's suitability and willingness to carry out the responsibilities of a guardian.
- Confirmation the patient has had information about guardianship and their rights and the date this was given. Confirmation that the nearest relative has had full information about guardianship and their rights before the formal consultation had been completed.

- The patient's response and attitude to the proposed guardianship should be indicated. A statement about patient's capacity to understand the nature of guardianship and their willingness to work with the guardian.
- The arrangements for monitoring, review and visiting the patient if they are in hospital should be included with the name of the person taking responsibility for these three tasks.

8.3. Formal Mental Health Act Assessment

8.3.1. At this point the two medical recommendations will be sought. The AMHP will formally interview the patient and formally consult the nearest relative.

8.4. Forms

- The medical recommendation is made on either Form G3 (joint recommendation if both doctors are present) or Form G4 (separate recommendation).
- An application by nearest relative is made on Part 1, Form G1 and by an AMHP on Part 1, Form G2.
- Where a person other than a local authority social services department is named as a guardian, the statement by that person that s/he is willing to act is made on Part ii, Form G1 or G2.
- Where a nearest relative wishes to discharge the guardianship this can be done by letter.
- Information on a patient's rights will be given in the form of a letter. This will be given to the patient, nearest relative and any other involved individual as appropriate.

8.5. Acceptance into guardianship

8.5.1. The following steps need to take place after the formal Mental Health Act assessment has taken place:

- The application, recommendations, risk assessment, summary of the case conference, guardianship report and care plan are then taken by the AMHP to the Service Director Adult Social Care (after being checked by another AMHP). The Service Director Adult Social Care will then accept the application being made. Acceptance must be within 14 days of the second medical examination.
- The record of acceptance of guardianship is recorded on Form G5 by the Service Director Adult Social Care (the AMHP will need to provide the forms). Where the guardian is a private individual, acceptance must be made by the local authority of the area where the proposed guardian resides.
- The AMHP will then attach the completed G5 to the application and is responsible for ensuring that any rectifiable errors are corrected.
- The AMHP will inform the Specialist Mental Health Team Leader of the date that the patient and nearest relative were informed of their rights. The original Mental Health Act documents will be kept/scanned on to the patient's file by the care coordinator with copies in the SMHT file (if separate).

- Where the guardian is a private individual, s/he must be informed of the acceptance of the application. A care coordinator must be allocated to work with and advise the guardian as necessary.

9. Renewal of guardianship

- 9.1. On being informed of reception into guardianship the care coordinator will arrange the date of the review. This will be done two months before the guardianship would end if not renewed.
- 9.2. All persons involved in the procedures approving and accepting the application must give their immediate attention to the matter to avoid delay.

Reports required to renew guardianship

- 9.3. The responsible clinician (RC) or nominated medical attendant will need to interview the patient within the last two months of guardianship. If the patient's circumstances still require the continuation of the guardianship, this should be confirmed by the RC completing a report for Renew of Authority for Guardianship (Form G9)
- 9.4. It is anticipated that any decision to recommend continuation will be taken after a multi-disciplinary discussion with all the key people involved in the case, including the patient, relatives, carers and in particular the nearest relative.
- 9.5. A supplementary report from the care coordinator involved in the case is also required. This could take the form of a care plan review. It should take as its starting point the original report supporting guardianship.

The report should also include:

- Changes in the patient's health and social situation since the guardianship or last renewal of guardianship.
 - The current care plan.
 - The reasons for the key elements of the care plan.
 - An explanation to the contribution guardianship has made and is expected to make to the future care plan.
 - The views of relatives, including the nearest relative, and other interested and relevant people.
 - The view of the care coordinator recommending the renewal of guardianship and an indication of how long it is likely to be required.
- 9.6. These reports from the RC and the care coordinator should reach the AMHP Lead in time for them to be read and taken to the Service Director Adult Social Care before the date on which guardianship would end if it was not renewed. They will then complete Part ii of Form G9 to authorise the renewal of guardianship.

9.7. Advice at time of renewal

- 9.7.1. Depending on the circumstances, advice can be sought from an AMHP Lead. In complex cases, advice may also be sought from West Berkshire Council Legal Services.

10. Record keeping

- 10.1. Records must be accurate and up-to-date with the knowledge that they may be required for presentation as evidence to the County Court or form the basis for reports to the Mental Health Review Tribunal.

11. Guardianships requests by the Mental Health Review Tribunal and Courts

- 11.1. Both a MHRT and the courts can request that West Berkshire Council's Adult Social Care Service explores the possibility of guardianship in the case of any individual that is appearing before them.

Powers of the Tribunal to request the consideration of guardianship (section 72(3)(a))

- 11.1.1. If the tribunal wishes to explore the guardianship option, it should then be asked to use its powers to defer discharge or adjourn in order to give time for West Berkshire Council's Adult Social Care Service to consider and give a view of the acceptability of a proposed guardianship plan.

11.2. Powers of courts to make guardianship orders (section 37)

- 11.2.1. Requests from court which are considering the possibility of making a guardianship order may be addressed to the AMHP Lead. If a plan is feasible and acceptable to West Berkshire Council Adult Social Care Services within the framework described in this policy, the court will be advised of this so that it can consider making a guardianship order.

12. Transfer from detention in hospital to guardianship

- 12.1. Where a patient is already "liable to be detained" under the provisions of section 3 of the Mental Health Act 1983, it is possible to transfer the patient into guardianship, basing the transfer on the application and recommendations on which the original section 3 was accepted under section 19(2)(b). The procedures for this process are set out in Mental Health (Hospital, Guardianship and Treatment) Regulations (England) 2008 Regulation 7. The process for transfer into guardianship should follow as far as possible that set out in Section 6 of this policy.

13. Private guardian

- 13.1. The Mental Health Act 1983, section 10(1) states that if a guardian is a private individual and s/he either gives notice to West Berkshire Council Adult Social Care Department that s/he relinquishes the function of guardian or s/he dies, the guardianship of the patient will then be vested in local authority. The department may then take steps to transfer the patient into the guardianship of another individual.

- 13.2. If a private guardian is incapacitated by illness or any other cause from performing his/her functions, the local authority may take on functions or approve another individual to do so whilst they are incapacitated (section 10(2)).
- 13.3. Section 10(3) of the Act allows a County Court, on application of an AMHP, to transfer the guardianship of a patient to the local authority or an individual approved by it, when it appears to the AMHP that the private guardian is performing his/her duties negligently or contrary to the interests of the patient. This should be done in consultation with the Joint Legal Team.
- 13.4. The arrangements for appointing a private guardian are complex and if this is envisaged, additional advice should be sought from the AMHP Lead, and if required, the Joint Legal Team.
- 13.5. The decision about the suitability of the proposed private guardian will follow the points outlined in the Code of Practice (Chapter 30). The suitability of the proposed private guardian will be a necessary element of the provisional guardianship plan.

14. References

Department of Health (2015). Mental Health Act 1983 Code of Practice. <https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>

Mental Capacity Act 2005
<https://www.legislation.gov.uk/ukpga/2005/9/contents>

Mental Capacity Act Code of Practice
<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Mental Capacity Act: making decisions
<https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>

Jones, R.M. (2018). Mental Health Act Manual, Twenty First Edition, Sweet & Maxwell, London

Appendix A – Letter to person on guardianship

13 April 2021

<<name>>
<<address>>
<<postcode>>

<<Team name and address>>

Our Ref:
Your Ref:
Please ask for:
e-mail:

Dear <<Name>>,

I am writing to inform you that you have been made subject to a Guardianship Order under Section 7 of the Mental Health Act 1983, for a period of <<duration>> from <<insert date>>.

This may be renewed for a further period of <<duration>> and after that <<timescale>> if the medical practitioner is satisfied that guardianship remains necessary. The doctors and mental health professionals that know you believe that this is necessary for your welfare. Section B of the Mental Health Act 1983 gives the guardian the following powers:

To require you to live at a specified place, that is <<insert placement address>>

To require you to attend places at times for medical treatment, if required.

The power to require access to you be given by any medical practitioner, Approved Mental Health Professional and any other person specified by the guardian and the staff at <<placement name>> who provide your day to day care.

If you are not satisfied and wish to appeal you can apply to the Mental Health Review Tribunal. They can discharge the Guardianship Order if they think this appropriate. A copy of a leaflet explaining your rights under the Mental Health Act is enclosed. The address of the Mental Health Review Tribunal is:

Clerk to the Tribunal
<<address of local MHRT office>>

Your nearest relative within the meaning of the Act is:

<<name of nearest relative>>
<<address>> <<postcode>>

You are free to ask <<insert him/her>> to discharge you from the guardianship, as they are entitled to do so under Section 23 of the Mental Health Act 1983. To do this <<insert he/she>> must write to the Service Director Adult Social Care, West Berkshire Council.

Yours sincerely
<<insert name of AMHP>>
Approved Mental Health Professional

Appendix B – Letter to Nearest Relative

13 April 2021

<<name>>
<<address>>
<<postcode>>

<<Team name and address>>

Our Ref:
Your Ref:
Please ask for:
e-mail:

Dear <<Name>>,

I am writing to confirm that your <<relationship and name of relative>> was made subject to a Guardianship Order under Section 7 of the Mental Health Act 1983 for a period of <<duration>> from <<date>>. The powers and provision of the Guardianship Order are listed under Section 8 of the Mental Health Act 1983 and I will explain these below.

<<client name>> is required to live at a place specified by the guardian. This is currently <<address of placement>>

The guardian has the power to return <<client name>> to <<placement address>> if <<insert he/she>> absconds or is taken away without agreement.

<<client name>> is required to attend any place the guardian may specify for the purposes of medical treatment.

<< client name>> is required to allow access to him/herself by specified professionals. These are currently <<name of GP>>, his/her GP or any of his/her colleagues from the practice, his/her care co-ordinator, <<staff name>> or associated colleagues plus <<placement name?? staff who will provide his/her day to day care.

As <<client name>> nearest relative under the Mental Health Act 1983, you have the power to discharge the Guardianship Order.

I enclose a copy of the care plan completed for the guardianship application. If you have any queries regarding the information in this letter, please do not hesitate to contact me.

Yours sincerely

<<name of AMHP>>
Approved Mental Health Professional

Mental Health Act 1983 Section 7: Guardianship

Patients name: <<insert name>>

Your doctor is: <<insert name>>
(nominated medical attendant or responsible clinician)

Guardian's details:

Name: <<name of guardian>>

Address: <<address>>

<<postcode>>

Telephone: << number>>

What is guardianship?

Under Section 7 of the Mental Health Act 1983 people who have a mental disorder can be given a guardian to help them, if two doctors say this is needed. The guardian is someone from your local Social Services Department or someone who has been approved by them. The guardian can say you must do certain things. You may have to:

- Live in a particular place
- Attend for medical treatment, occupational education or training at set places and at set times.
- Allow a doctor, approved mental health professional or other named person to see you.

Why do I need a guardian?

Two doctors think that you need help to live in the community as you have a mental disorder and you need a guardian for your own welfare or to protect other people

How long does it last?

For up to six months at first.

What happens next?

At the end of the six months the guardianship may be renewed for a further six months and then for a year at a time, if your doctor feels this is necessary. Your doctor or your mental health professional will tell you about this nearer the time

Can I appeal?

If you want to stop being under guardianship, you should discuss this with your guardian, or your doctor, or your mental health professional. You (or your nearest relative) can also write to your local Social Services Department and ask them to look into your case.

You can ask for a Mental Health Review Tribunal to discharge you from guardianship. You can apply to a Tribunal any time in the next six months. If your doctor thinks you need to stay under guardianship for a further six months you will be able to apply to the Tribunal again. After that, you can apply once every year that you are still under guardianship.

What happens at a Mental Health Review Tribunal?

The tribunal is independent of the local authority. The Tribunal members will come and meet with you and listen to your views and to those of your representative (if you have one). The Tribunal doctor will also come and see you before the Tribunal hearing. They will speak to your doctor, mental health professional and read reports about you before deciding if you are well enough to be discharged from guardianship. The tribunal will give you a written decision within 7 days of the date of the hearing.

You might want to ask a solicitor to help you with the Tribunal. The Social Services Department has a copy of the Law Society list of specialist solicitors, or you might want to use your own solicitor, this may be free of charge under the Legal Aid Scheme.

The name of the Tribunal office is:

<<name of local MHT office>>

<<address>>

<<postcode>>

Will I be given treatment?

Your doctor will tell you about any treatments he/she thinks you need while you are subject to guardianship. You cannot be given any treatment without your consent while under guardianship.

Will my nearest relative be told?

A copy of this leaflet will be given to your nearest relative who we have been told is:

<<name of nearest relative>>

<<address>>

<<postcode>>

If you do not want this person to receive a copy of the leaflet please tell your mental health professional or guardian.

If there is anything here you do not understand, your doctor, a nurse or a social worker will help you. If you need help to write a letter you should ask one of them or a friend, or relative, to help you. Speak to your mental health professional if there are any questions you have which this leaflet has not answered.

A copy of the accredited Mental Health Solicitors is available at:

<https://www.lawsociety.org.uk/for-the-public/using-a-solicitor/quality-marks/mental-health>