Guardianship Policy

Hampshire County Council

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Adults' Health and Care Directorate Policy:	**08/22 V3**
Guardianship Policy	
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Issued By:	Issued by: Strategic Commissioning Director Mental Health Authors: Barbara Luscombe (AMHP Team Manager) Jane Kalmykov (District Service Manager)
Contact:	central.amhp.service@hants.gov.uk
Sponsor:	Head of Mental Health and Substance Misuse Services
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Amendment:	Date:
AIS/CareDirector terminology changed & Office address update at 3.10	11/2023
• Policy fully reviewed. • Removed case study into Social Care Practice Manual Guidance for practitioners. • Moved policy to the updated policy template for clarity. • Internal process Flowcharts removed to be included in practitioner guidance. • Moved internal Panel terms of reference to the Social Care Practice Manual.	05/2024

Contents

1. Purpose and scope

1.1 This policy aims to support the Directorate's corporate objectives of building strong and safe communities and improving services through the provision of a high-quality service to people who become subject to the 1983 Mental Health Act, and their carers. This includes the development of systems to ensure that the local social services authority is aware of its role and responsibilities when managing guardianship.

1.2 This policy represents an update to the 2019 guardianship policy to include consideration of the Care Act 2014. Specifically, s.1 of the Care Act 2014, considering an individual's wellbeing with a strength-based approach. The policy has been subject to review as part of a corporate audit, ensuring that effective governance and best practice is maintained.

1.3 Amendments have been made to the Mental Health Act 1983 as a result of the Mental Health Act 2007. As an established function of the 1983 Act, guardianship has been made subject to minor changes in its execution. From an operational perspective, the assessment and application of guardianship remain relatively unchanged in this procedure, however its suitability is now placed in the wider context of the Deprivation of Liberty Safeguards as per the amendments in the Mental Health Act 1983 amended in 2007 and the Mental Capacity Act 2005. The authors are aware of proposed changes to Liberty Protection Safeguards and will continue to review this policy in line with future changes as necessary.

"The purpose of guardianship is to enable patients to receive care outside hospital where it cannot be provided without the use of compulsory powers" Mental Health Act Code of Practice (COP) 30.2.

1.4 This policy will need to be implemented by all those who believe guardianship may be suitable for consideration when working with individuals aged 16 years and above. Approved mental health professionals (AMHP) and responsible clinicians are typically the main professional roles concerned in its implementation. Staff in other care groups will also be required to consider this procedure where the guardianship function is deemed necessary. Service users who could be described within the definition of mental disorder (as per s.1 MHA 1983) could be deemed eligible for guardianship in the context of safeguarding processes under Care Act 2014 and / or decisions associated with Mental Capacity (1.1 Mental Capacity Act Code of Practice).

2. Powers

2.1 There are three powers under guardianship:

The power to require the patient to reside at a specified place.

Contrary to previous legislation, the amended Mental Health Act 1983 allows for the patient to be taken to a specified place and retaken when under a Guardianship Order. (see s.18 (3) and s.137). There are no powers to convey a patient under guardianship to a place for treatment. This residence power is one

which is aimed at discouraging a patient from living rough or living with people who may exploit or mistreat them, or to ensure that they reside in a hostel or other facility.

The power to require the patient to attend for medical treatment, occupation, education or training.

This is an authority to attend, not to enforce treatment or occupation. There are no sanctions if someone rejects the authority of the guardian.

The power to require access to the patient to be given to doctors, AMHPs or other persons specified by the guardian.

This can be used to give someone authority to enter premises for example, to ensure someone is not neglecting themselves.

The above powers are in place to ensure a patient primarily receives care and protection rather than medical treatment.

3. Legislation, Guidance and Case Law

a) Mental Health Act 1983 http://www.legislation.gov.uk/ukpga/1983/20/contents
b) Mental Health Act Code of Practice (COP) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF
c) Reference Guide for the Mental Health Act 1983 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/417412/Reference_Guide.pdf
d) Mental Capacity Act Code of Practice https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf
e) Care Act 2014 https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted
f) Re C; C v Blackburn and Darwen Borough Council (2011) EWHC 3321 (COP) http://www.mentalhealthlaw.co.uk/Re_C;_C_v_Blackburn_with_Darwen_Borough_Council_(2011)_EWHC_3321_(COP)
g) Re NL v Hampshire County Council (2015) https://www.mentalhealthlaw.co.uk/index.php?search=NL%20v%20Hampshire%20CC%20(2014)%20UKUT%20475%20(AAC)%2C%20(2014)%20MHLO%20107
h) Re NM v Kent County Council (2015) https://www.mentalhealthlaw.co.uk/NM_v_Kent_County_Council_(2015)_UKUT_125_(AAC),_(2015)_MH
i) KD v Walsall MBC and Others (2015) 39 Essex Chambers | KD v A Borough Council and others - 39 Essex Chambers | Barristers' Chambers

4. Definitions

Approved Mental Health Professional (AMHP) – Mental Health Professional approved and appointed under s.114 to carry out assessments under the Mental Health Act 1983.

CareDirector – This is the name of the Adults' Health and Caree case management system.

Deprivation of Liberty Safeguards (DOLS) – The framework for safeguards under the Mental Capacity Act 2005. For people who need to be deprived of their liberty for care and treatment and are unable to consent as they lack the capacity to do so.

Guardianship – A guardian is appointed, either the local authority social services authority or a private guardian. The guardian supports people for their own welfare and to protect others.

Guardianship administrator – The guardianship administrator will act on behalf of HCC. They will fulfil the actions outlined in this policy and associated working protocols, which include receiving and scrutinising the legal documentation, organising and minuting the Guardianship Panel.

Guardianship Order – Authorised by the court under s.37 of the Mental Health Act. The effect is like that of a civil guardianship, the nearest relative cannot discharge this guardianship, they can apply for a tribunal.

Guardianship Panel – To offer objective scrutiny to each Mental Health Act (1983) Guardianship application, renewal and decision on discharging on behalf of the Local Social Services Authority as accountable to the Elected Cabinet.

Independent Capacity Act Advocate (IMCA) – An independent advocate can offer support to qualifying patients as required under the Mental Capacity Act 2005 when there is no family member or friend to advocate on their behalf.

Independent Mental Health Advocate (IMHA) – An independent advocate can offer support to qualifying patients as required under the Mental Health Act 1983.

Liberty Protection Safeguards (LPS) – Anticipated change to DOLS as part of the overall review of The Mental Capacity Act.

Local Social Service Authority (LSSA) – The local authority responsible for social services in an area of the country.

Mental Capacity Act 2005 (MCA) - Legislation to support those 16 and over, who lack capacity to make decisions for themselves.

Mental Health Act 1983 as amended 2007 (MHA) – The Mental Health Act is the legislation for all aspects of compulsory admission to hospital. As well as the treatment, welfare and aftercare for those who have a mental disorder as in s.1 of the Act and need provision for their own health, safety and/or for the protection of others.

Mental Health Tribunal (MHT) – An independent judicial body which has the power to discharge patients from detention, supervised community treatment, guardianship and conditional discharge.

MH1 – AMHP report where the AMHP provides clarity on decision making for s.7 applications.

Nearest Relative (NR) – A person defined by s.26 of the Mental Health Act who has certain rights and powers in respect of a patient for whom they are nearest relative.

Patient – A person suffering from a mental disorder or appearing to be. In this policy it relates to the person who appears to be suffering from a mental disorder and who may need to be or have been received into guardianship. Patient is not typically used as a descriptor in Social Care but is appropriate to this policy as the legislation applies to health and social care.

Responsible Clinician (RC) – The responsible clinician in this case is the approved clinician authorised by the local social service authority to act as the responsible clinician (either generally or in any case or for any particular purpose) as the responsible clinician.

Responsible Social Worker (RSW) – This is an HCC organisational description of the role of the allocated qualified member of staff who is responsible for ensuring that the legal responsibilities toward someone managed under s.7 / s.37 of the Mental Health Act are carried out on behalf of the local authority.

5. Introduction

5.1 Guardianship powers should always be considered when there is a need to provide an authoritative framework for working with a patient, with a minimum of constraint, to achieve as independent a life as possible within the community.

5.2 All people subject to a Guardianship Order will have an allocated qualified social worker, referred to in Hampshire as the Registered Social Worker (RSW). In cases where the service user comes from a care group other than mental health, it is more appropriate for the allocated social worker who knows the service user to take on the role of RSW.

5.3 AMHPs should consider guardianship as a positive alternative when making decisions about a patient's treatment and welfare. It should be actively considered as an alternative to both hospital admission and to continuing hospital care (in the latter community treatment order (s.17(a)) may be a more appropriate option where the relevant statutory criteria are met, see COP Ch. 31).

5.4 Guardianship can be an appropriate consideration for persons who are at risk of abuse and who may be subject to safeguarding concerns. An application can be considered where 'it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received' s.7 (2(b)) MHA.

5.5 It is not unlawful for someone to be subject to both a s.7 Guardianship Order and an authorisation under the DOLS. In light of Re C; C v Blackburn and Darwen Borough Council (2011) EWHC 3321 (COP) careful consideration and expert advice may be required to ensure the suitability of an individual being made subject to both corresponding legal frameworks simultaneously.

6. Deprivation of Liberty (DOLS)

Guardianship powers **may not** be used to deprive a person of their liberty.

6.1 When a person is subject to guardianship under the MHA 1983, their guardian can decide where they are to live but cannot authorise a deprivation of liberty and cannot require them to live somewhere where they are deprived of their liberty, unless that deprivation of liberty is authorised.

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6.3 If it is in the patient's best interests to be required to live at, or attend, a hospital or care home in which they will have to be deprived of their liberty, and they cannot make that decision for themselves, it may be necessary to obtain a deprivation of liberty authorisation under the MCA 2005.

6.4 If a patient is not eligible for such an authorisation, their detention could only be authorised by an application for admission, or a transfer from guardianship to hospital under the Act.

6.5 A person who is subject to guardianship and who lacks capacity to make the relevant decisions may need specific care or treatment in a care home or hospital that cannot be delivered without deprivation of liberty. This may be in a care home in which they are already living or in which the guardian thinks they ought to live, or it may be in a hospital where they need to be in for mental health care. The process for obtaining a deprivation of liberty authorisation and the criteria to be applied are the same as for any other person.

6.6 The decision to consider the use of guardianship should normally be discussed at a case review or care planning meeting except in cases of emergency. Key elements of the plan are likely to include:

7. Application for Guardianship S.7

7.1 The decision to consider the use of guardianship should normally be discussed at a case review or care planning meeting except in cases of emergency. Key elements of the plan are likely to include:

- suitable accommodation to help meet the patient's needs
- access to day care, education and training facilities, as appropriate
- effective co-operation and communication between all those concerned in implementing the plan and (if there is to be a private guardian) support from the Local Social Services Authority (LSSA) for the guardian

'If a local social services authority have reason to think that an application for admission to hospital or a guardianship application may need to be made in respect of a patient within their area, they shall make arrangements for an AMHP to consider the patient's case on their behalf' s.13(1) MHA.

7.2 Guardianship applications can only be made in respect of patients who are assessed as 'suffering from a mental disorder of a nature or degree which warrants reception into guardianship; and it is in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received' s.7(2) MHA.

7.3 Only persons aged 16 years or over may be accepted into guardianship.

7.4 Note that in the case of someone with a learning disability such diagnosis is not by itself a sufficient criterion for guardianship. Learning disability is referred to in s.1(4) MHA meaning a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning. When considering application for detention however, learning disability needs to

be associated with one or both of the following - abnormally aggressive or seriously irresponsible conduct – see s.1(2a) & COP Ch.20.7-20.16.

7.5 An application for guardianship may not be made where the Nearest Relative (NR) communicates their right to object (s.11(4) MHA). In the event of a NR objecting to an application for s.7, the AMHP will need to consider making an application to the Court to displace the NR under s.29 MHA. In this event the AMHP should discuss the case with the Head of Mental Health prior to any on-going consultation with HCC Legal Team.

7.6 The AMHP's application is founded on two medical recommendations, one of which must be from a doctor approved under s.12 of the Act. The COP also stipulates that the LSSA must authorise an approved clinician to be the patient's responsible clinician. Each responsible clinician must be checked against the regional 'approved clinician' register by the guardianship administrator prior to LSSA agreement for acceptance of a patient's status under guardianship both on application and at renewal (if applicable).

7.7 The application form (G1 (Nearest Relative) or G2 (Approved Mental Health Professional)) should be sent to the Guardianship administrator marked for the attention of the Duty AMHP Manager within 14 days from the date of when the patient was last examined by a doctor.

7.8 The application should be accompanied by the latest 'comprehensive care plan'. Hampshire social services authority also require a full social circumstance report including risk factors, views of NR and identification of powers under guardianship which will be necessary to achieve the care plan (please refer to COP 30.20) The plan should identify the services needed by the patient and who will provide them. The care plans should include how the principles of the Mental Capacity Act have underpinned the planning and supported decision making. There should be clarity of the medium to long term goals of the service user and how a strength-based approach is supporting the service user to achieve their goals. Additionally, the social circumstances report should reflect on how the guardianship is the least restrictive alternative and how this will be reviewed at three monthly intervals.

7.9 All application paperwork will be received by the **Guardianship administrator, AMHP Team, Montgomery House, Monarch Way, Winchester, Hampshire, SO22 PW Tel; 01962 832406**. All application paperwork will be scrutinised against the administrative scrutiny checklist by the Duty AMHP Manager. If sending electronically, email central.amhp.service@hants.gov.uk marked 'For the attention of the Guardianship Administrator.'

7.10 A guardianship application only comes into effect after it has been accepted on behalf of the authority. This includes guardianship arising from criminal proceedings. Guardianship applications will ordinarily be accepted on behalf of the authority by: **Head of Mental Health or delegated responsible office.**

7.11 After acceptance on behalf of the authority the order remains in force for 6/12 calendar months. See section 6 in this policy for information on renewals.

8. Appeals to the Mental Health Tribunal

8.1 Whenever a person has been accepted into guardianship, the guardian is required to inform them of their right to appeal to the Mental Health Tribunal. This should be done orally and in writing. The NR must also be provided with this information in writing where it is reasonably practicable to do so.

8.2 Should a patient wish to make an appeal, they should be supported and encouraged to seek appropriate legal counsel. Formal application should be made by the patient to the Tribunal Office who will contact the LSSA concerned.

8.3 On receipt of confirmation of the lodging of an appeal by the patient to the Tribunal Office, the duty AMHP manager, with support from the guardianship administrator will co-ordinate the tribunal hearing using the tribunal checklist. They will also be required to complete the 'Information about the Patient Statement' to return to the Tribunal Office in accordance with the stipulated timeframe. Guidance on arrangements for provision of the tribunal are laid out in the Practice Directions for Health, Education and Social Care Chamber – Mental Health Cases, see latest directions:

Home - Courts and Tribunals Judiciary
FTT PD Statements in mental health cases in HESC wef 28 Oct 2013 (judiciary.uk)
T116 - Application to First-tier Tribunal Guardianship (publishing.service.gov.uk)

8.4 The NR should be advised of their right to request a Mental Health Tribunal if the person they are NR for is under s.37.

9. Renewal of Guardianship

9.1 Guardianship is renewed by the responsible clinician (RC) or 'nominated medical attendant' (NMA) in the case of private guardians.

9.2 The RC or NMA needs to examine the person within two calendar months of the date of expiry of the order if it is to be renewed.

9.3 After the initial six months of the order, renewal is for a further six months and thereafter for periods of a year (where a transfer into guardianship from a s.2 or s.3 has been accepted renewal is counted from the date of the start of the original s.2 or s.3 not from the date of transfer into guardianship).

9.4 Renewal and discharge of guardianship should be considered as part of the care planning process. RCs and RSWs should take full responsibility for recording timescales concerning patients on guardianship and should not require prompting for professional action when renewal dates are due.

9.5 The guardianship administrator will send a written notification of the need for renewal and a blank form G9 to the RSW two months in advance of the date on which the guardianship is due to be renewed or not.

9.6 In the case of private guardians, the duty AMHP manager will also write to the private guardian advising them of the orders expiration in two months' time.

9.7 The RSW will arrange for the client to be medically examined by the RC or nominated medical attendant (NMA), (in the case of a private guardian), within two months of the expiry date of the order. RSW to notify the AMHP Manager immediately in the absence of an allocated RC.

9.8 The RC or NMA will complete the form of authority for the renewal of guardianship (form G9) and the order is renewed the day after the date on which it would otherwise have expired.

9.9 The RSW will provide a social circumstance report on the client's current situation including the reasons for the renewal. This report, together with the completed form G9 will be sent to the duty AMHP manager. This must arrive two weeks before the expiry date.

9.10 The duty AMHP manager will record the receipt of the documents and check that the documents are correct and valid. Where there is a private guardian – the duty AMHP manager will write to the private guardian informing them of the renewal of the order.

9.11 Once the paperwork has been fully received a decision to authorise renewal of the guardianship status will be considered by the guardianship panel. If authorisation is provided the RSW will receive a standard letter sent out by the guardianship administrator confirming renewal status.

10. Discharge of Guardianship

10.1 It is not good practice to allow a guardianship to lapse. There should be regular interagency reviews of the person's needs and the effectiveness of the care plan and the use of guardianship. The RSW should continually consider the strengths of the person and consider less restrictive alternatives in the community to promote appropriate and timely discharge from guardianship. The LSSA can discharge the guardianship and should consider doing so at times of renewal (as in 4.3).

10.2 Where it is agreed that guardianship is no longer necessary, the RC should be asked to exercise their right to discharge and inform the duty AMHP manager in writing the date on which the discharge is to occur. The RSW should ensure that the duty AMHP manager is informed of the date of the discharge as well as the patient, their NR and others involved in the person's care.

10.3 Any disagreement between the RSW and the RC over the discharge or renewal of guardianship must be resolved or managed through the appropriate management channels. In certain circumstances it may be necessary to convene an extraordinary Guardianship panel with both LSSA (HCC) and NHS Provider Trust members in situations where escalation is required.

10.4 The NR of the person subject to s.7 guardianship has the right to discharge of the patient. This is not subject to a 72-hour period of notice as with hospital detention. Where the LSSA receives a letter requesting discharge it will be acted on immediately and discharge will be affected from that date. The duty AMHP manager will ensure that the RSW is informed and asked to ensure that the patient, their NR and others involved in the person's care are aware that discharge is affected. Although the NR can discharge the guardianship it does not give them powers to remove a person from their accommodation or make decisions about their care without their consent. In these circumstances the duty AMHP manager must be consulted before the patient is returned to the care of the discharging relative

10.5 This power of NR discharge does not apply where the patient is subject to s.37 Guardianship Order. In this instance NR can apply for a Mental Health Tribunal.

11. Absent Without Leave

Section 18.3 MHA gives the power to take a person who is subject to guardianship into custody where they are absent without leave.

11.1 Where a patient subject to guardianship is absent without leave, they can be taken into custody and returned to the place they are required to reside by any officer of the staff of the LSSA, a constable (police officer) or by any person authorised in writing by the LSSA.

11.2 The RSW must advise the manager in charge of the accommodation, or the householder concerned, at the time the Guardianship Order is accepted, that if the person subject to guardianship goes absent without known reason, they must inform both the police and social services immediately.

11.3 If the patient is absent without known reason, the police should be requested to help find the person concerned. They should be reminded of their powers under the MHA at the time of first contact. The RSW should be contacted as soon as possible to facilitate the search or in the event of the RSW's absence, the appropriate staff member as identified by the team manager. The care plan should clearly illustrate those who may be able to support the police to find the person, known preferences of the person that may support engagement and any known triggers.

11.4 Where the guardian is a private individual the RSW should notify the guardian as soon as possible. If the patient remains missing for more than one hour, the social worker dealing with the case should inform the NR / carer about the absence.

12. Transfers from compulsory hospital admission to guardianship

12.1 Where transfer into guardianship from a section is considered appropriate, the AMHP will prepare a social circumstance report. Note that a transfer from s.3 into guardianship will not be accepted if the order has less than two months to run. In these cases, a fresh assessment by an AMHP and two doctors should be made. This is best practice guidance to allow the client to be adequately and formally re-assessed for guardianship.

12.2 Prior to completion of Form G6 by the MHA administrator on behalf of the hospital managers, the AMHP should forward copies of the MH1, application for admission and medical recommendations from the original assessment to the duty AMHP manager to seek agreement with the guardianship panel for transfer into guardianship. If agreed, a transfer date should be recommended which will be in the best interests of the patient.

12.3 On agreement of the panel, the hospital managers should complete an authority to transfer on Part I of form G6. This should then be forwarded and filed with copies of the MH1, application for admission and medical recommendations from the original assessment to the duty AMHP manager. No fresh medical recommendations or application for guardianship are needed because the patient is being transferred into guardianship under s.19.

12.4 All relevant parties will be informed of the acceptance of the order by means of standard letter sent out by the guardianship administrator and will be asked to inform the patient and NR of the effective date of transfer into guardianship and their rights under the MHA.

12.5 Part 3 patients are treated as if subject to a Guardianship Order made on the same day as the order or direction to which they were previously subject.

13. From Guardianship to hospital

13.1 A client subject to guardianship can be admitted to hospital informally or compulsorily either as an emergency admission or for assessment. In both cases, guardianship remains in force.

13.2 In the case of s.2 or s.4 admission, the usual procedure for application should be followed.

13.3 Where a client needs to be admitted for treatment under s.3 of the MHA, the AMHP should arrange for two medical recommendations to be completed on forms A7, A8, and complete their application on form A6 as usual. The AMHP's duty to consult the NR and duties under s.11 still apply.

13.4 Instead of an application for admission to hospital for treatment it is possible for the responsible LSSA to authorise the transfer of a guardianship patient to detention in hospital using form G8 ‘Authority for Transfer from Guardianship to Hospital’. This can be completed by the Head of Mental Health or the delegated officer. This executes transfer into hospital under s.19 guardianship ceases to be in force and the s.3 runs from the date when the original guardianship application was accepted.

13.5 The AMHP should inform the NR of the transfer.

14. Guardianship Transfer

14.1 When a person is subject to guardianship, (where the Director is Guardian), moves into or out of Hampshire, it is appropriate to transfer guardianship to the local authority they are moving to – probably when the case is transferred to the new area for care management and/or the RC is changed.

14.2 When a client is moving out of Hampshire, and transfer of guardianship is appropriate, the RSW should inform the duty AMHP manager, who will arrange for the G7 form to be completed and sent to the appropriate contact in the new LSSA.

14.3 Form G7 should be forwarded to the new authority, with copies of all relevant paperwork from the original guardianship application and any subsequent renewals for acceptance by new RC and LSSA. If agreement is reached about the transfer, then the G7 form is to be completed by the original guardian and sent to the receiving team.

14.4 When a client is moving into Hampshire, the above procedures will be reversed, so that the local authority from which the client is moving will approach the relevant mental health team in Hampshire and send the appropriate paperwork including form G7 completed.

14.5 All proposed transfers of patients subject to guardianship should be considered by the guardianship panel which will require all relevant care planning paperwork and legal documentation. This should be coordinated by the guardianship administrator.

14.6 Planning for transferring patients from one area to another needs to include the specific action for handing over service user notes/documentation in a secure manner.

15. Section 37 Guardianship Order

15.1 A Magistrates Court or Crown Court can place someone under the guardianship of the LSSA or a private individual (in both cases only with the agreement of the LSSA). Practitioners receiving requests for, or suggesting, such a disposal should discuss this with the duty AMHP manager.

15.2 Where there is consideration of the use of s.37 Guardianship Order the following standard procedure should be observed:

- the defence is asked to produce to the court a letter from the authority, certifying willingness to receive the offender into guardianship, or
- where such a letter is not produced, but where the court is minded to make a Guardianship Order, the court exercises its power under s.39(a) of the Act to request the local authority to inform the court whether it is willing to receive the offender into guardianship

15.3 Requests from the court should be referred to the Head of Mental Health and marked for the attention of the duty AMHP manager.

15.4 On receipt of a request from the Court, such cases will be allocated to a hub AMHP for consideration to support the decision-making process.

15.5 In all such cases, as with s.7 applications, the duty AMHP manager will give consideration to the adequacy of the comprehensive care plan and to the arrangements for the management of risk before advising the guardianship panel whether to accept a s.37 Guardianship Order.

16. Duties of the Guardian

16.1 The guardian may be the Director of Adults' Health & Care on behalf of the authority or any named private guardian approved by the authority.

16.2 The RSW should ensure that persons under guardianship and their nearest relatives receive oral as well as written advice as per s.132 MHA.

16.3 All persons subject to Guardianship Orders must be visited **at least once every three months** by the RSW and once a year by an approved doctor (responsible clinician). This should be arranged by the RSW where the Guardian is the Director of Adults' Health & Care. It is expected that normal care planning procedures under the CPA will apply.

16.4 LSSAs have a duty to arrange visits to a patient who is under their guardianship when they are not in hospital or a care home, whether they are there to receive treatment or care for mental disorder.

16.5 RSWs/ AMHPs should be providing evidence for plans to ensure that the patient will be visited on a minimum basis of once every three months to monitor the guardianship arrangements. All renewal paperwork should evidence how visiting arrangements have been fulfilled.

16.6 Under s.116 persons subject to guardianship in hospital (whether detained or informal – or being treated for a mental disorder or a physical complaint) should be visited on behalf of the authority. This should be carried out by the RSW.

16.7 The person accepted into guardianship has a right of appeal to a Mental Health Tribunal. The RSW will assist the person in making an appeal on request.

17. Private Guardians

17.1 A private guardian should be a person who can appreciate special abilities and needs of individuals and look after the patient in an appropriate and sympathetic way. The private guardian must be accepted on behalf of the LSSA in which they reside as suitable to carry out the duties of a guardian. If a guardian being considered lives outside Hampshire the AMHP will have to liaise with the social services authority in which they live. The private guardian must agree to act before being nominated.

17.2 Private guardians are required to:

- appoint a nominated medical attendant (NMA)
- comply with any directions under the regulations that the RSW or team manager may give
- furnish the RSW or team manager with reports and information
- notify the RSW or team manager of any change of address of a person under guardianship. If 'the patient' moves to another social services authority area to notify that social services authority
- in the event of death of the person concerned or termination of guardianship by whatever means to notify the RSW or team manager as soon as practicable

17.3 The private guardian confirms his or her willingness to act as guardian in Part II of the AMHP application form G2 by his or her signature. This form when accepted should be attached to the record of acceptance (by the local authority) form G5. Note that it is jointly addressed to the guardian and to the local authority, but it is the local authority that processes it not the private guardian. He or she has no role in the process apart from confirmation of willingness to act. They do not sign anything else.

17.4 Where an application is made by the NR on form G1 everything is processed by the LSSA other than completion of the private guardian entry and signature.

17.5 Before completing the application for guardianship where a private guardian is being considered – the AMHP should discuss the use of a private guardian with the duty AMHP manager. The duty AMHP manager and Head of Mental Health must also agree to the use of a private guardian **before** the AMHP completes the application form.

17.6 Where private guardians die or otherwise become incapacitated guardianship rights automatically vest in the authority.

17.7 Where private guardians are negligent the County Court may transfer guardianship to the authority on the application of an AMHP.

17.8 In the event of a resignation of a private guardian, the LSSA should receive notification in writing after which time it will take up the role within the established time limits.

18. Performance Standards

18.1 Role of panel to ensure routine audit of guardianship processes and procedures on an annual basis.

18.2 Annual reporting to the Department of Health on guardianship activity is undertaken monitoring numbers of patients under s.7 MHA 1983, length of time under s.7, gender and relationship to guardian.