

**PROPOSED CHANGES TO THE CONSIDERATION OF ADULT MENTAL HEALTH GUARDIANSHIPS**

*To:* **Constitution and Ethics Committee**

*Meeting Date:* **22 April 2020**

*From:* **Director of Governance and Legal Services and  
Monitoring Officer**

*Electoral division(s):* **All**

*Purpose:* **The Committee is asked to consider a change to the way Adult Mental Health Guardianships are determined. Decisions on Guardianships are currently considered by the Service Appeals Sub-Committee, but it is proposed that this decision should be delegated to officers.**

*Recommendation:* **The Committee is asked to:**

**Recommend the changes to the Constitution, as set out in paragraph 2.5 of the report, to Full Council for approval.**

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## 1. BACKGROUND

- 1.1 Adult Mental Health Guardianship provides a legal framework to support vulnerable service users in the community, where positive outcomes for them may not be achieved without the use of such authority. Guardianship is usually used for people that can be cared for in the community. Once received into Guardianship, the guardian can require the person to live at a specific place, attend particular places at specific times for treatment, occupation education or training and to allow a doctor, Approved Mental Health Professional (AMHP) or other specific person to enter where he or she is living.
- 1.2 The application must be supported by recommendations from two doctors, and at least one must be approved under the Mental Health Act. Both doctors and the AMHP must agree that a Guardianship application is appropriate and necessary. Further information on Guardianships can be found at **Appendix 1**.

## 2. MAIN ISSUES

- 2.1 Guardianships are currently considered and approved by the Service Appeals Sub-Committee, a Member Panel. The Service Appeals Sub-Committee has considered two Guardianships in the last five years. By contrast, the Service Appeals Sub-Committee's main duty is to consider Education Transport Appeals. On average, the Sub-Committee considers 10-12 Education Transport appeals each year, enabling the pool of Members to develop a good knowledge and experience of this area of the Council's work.
- 2.2 The Member element of the guardianship process essentially involves members signing off the final documentation for the application (delegated responsibility). Although supported by LGSS Law colleagues at the meetings, Members have often expressed that they feel ill equipped to make such decisions. Guardianship also requires ongoing operational oversight which sits with operational managers.
- 2.3 In summary, the current process is as follows:
  - i. Request made to the Approved Mental Health Professional (AMHP) service following a discussion with the appropriate line manager
  - ii. AMHP leads on the application
  - iii. Application signed off by two Councillors in the presence of legal representation
  - iv. The Deprivation of Liberty Safeguards (DoLS) manager holds the list and ensures reviews are undertaken
  - v. DoLS manager completes the Department of Health & Social Care returns. (annual)
- 2.4 The proposed process is set out below:
  - i. The authority for sign off is delegated to the Service Director: Adults and Safeguarding.
  - ii. The lead on owning the process moves from the DoLS manager to AMHP service (i.e. holding guardianship list, ensuring reviews are undertaken and completing annual returns)

2.5 The changes required to the Constitution to effect this change are as follows:

Remove the following Delegated Authority in Section 3B11.1 - SERVICE APPEALS SUB-COMMITTEE:

*Authority to discharge the guardianship provisions under the Mental Health Act 1983*

Add the following Delegated Authority to Service Director: Adults & Safeguarding, in Part 3D - Scheme of Delegation to Officers:

*Authority to discharge the guardianship provisions under the Mental Health Act 1983*

2.6 The briefing note to Members on Adult Mental Health Guardianships is attached as **Appendix 1**.

<b>Source Documents</b>	<b>Location</b>
Sections 3B and 3D of the Constitution	<a href="https://cambridgeshire.cmis.uk.com/ccc_live/Documents/PublicDocuments.aspx">https://cambridgeshire.cmis.uk.com/ccc_live/Documents/PublicDocuments.aspx</a>

## GUARDIANSHIP

The purpose of Guardianship is to provide a legal framework to support vulnerable services user in the community where you may not be able to achieve positive outcomes for them without the use of such authority. Guardianship is commonly used for people that can be cared for in the community.

If a person has a mental disorder, a court can appoint a Guardian for them. This can only happen if the local authority considers it necessary for the person's welfare or for the protection of others. This arrangement is known as a Guardianship Order. The Guardian has powers and responsibilities to make decisions on behalf of and for the benefit of the person.

Guardianship can apply whether or not the person has the capacity to make decisions about care and treatment.

### Who can be a Guardian?

Under Section 7 of the Mental Health Act 1983 as amended [2007] (MHA), Guardianship can be arranged if an Approved Mental Health Professional (AMPH) on behalf of the Local Authority or the person's Nearest Relative.

### What powers does a Guardian have?

Section 8 of the MHA describes **three powers** that the Guardian has. These are:

1. **Residence** - The power to require the person (referred to in the act as the patient) to live at a specified place - but in doing this they cannot deprive the person of their liberty
2. **Attendance** -The power to require the person to attend specified places for medical treatment, occupation, education or training
3. **Access** - The power to require that access be given to the patient by a doctor, approved social worker or other specified person in order to check on their welfare

The decisions made by a Guardian must be the least restrictive option for the person with a mental disorder, and must always be made in the person's best interests.

The Guardian **cannot** detain the person and cannot restrict his/her movements. All they can do is insist that the person lives at the place specified and return the person to that place if appropriate. A Guardian **cannot** authorise the physical removal of someone from a place if they are unwilling. The Guardian **cannot** make you have medical treatment without your agreement. The Guardian has **no control** over the person's money or property. It is an offence to mistreat or wilfully neglect a person subject to a Guardianship Order.

### Applying for Guardianship

An application can be made for a person who has a mental disorder to be received into guardianship under section 7 of the MHA 1983 when:

- the person is over 16 years;
- they have a mental illness, severe mental impairment, psychopathic disorder or mental impairment that is serious enough to justify guardianship;

- guardianship is necessary in the interests of the welfare of the person or to protect other people;
- the relevant people agree that an application should be made – this is normally recommendations from two doctors and an approved social worker; and
- the person's nearest relative does not object.

### **How long does Guardianship last and can it be renewed?**

A Guardianship Order initially lasts for up to 6 months but can be renewed for a further 6 months and a further 12 months if it is renewed. The renewal must happen within the last 2 months of the Guardianship period and is led by Responsible Clinician. This is best done at a multi-disciplinary review and the care plan must be reviewed by the Care Co-ordinator.

### **Can Guardianship be discharged?**

Guardianship can be discharged and at every renewal point the professionals must consider whether Guardianship can be discharged. The discharge must be accepted by the Local Authority and the Responsible Clinician can recommend the discharge, the Local Authority itself could recommend discharge or the Tribunal could recommend discharge.

A Guardianship would end straight away if the person was detained in hospital for treatment of a Mental Disorder.

### **What are a person's rights under Guardianships?**

It is really important that service user has access to their rights whilst they are subject to Guardianship. They have a right to ask for a Tribunal and also a right to an Independent Mental Health Advocate. The responsibility to trigger an appeal is with the Care Co-ordinator or Social Worker responsible for the case. They are the link person between the service user and the Tribunal office.

### **Objecting to a Guardianship Order**

If the Nearest Relative objects to the Guardianship application then the application cannot proceed. In these circumstances and where appropriate the AMPH may have to consider if there is sufficient evidence to support an application to the Court to displace the Nearest Relative (s.29 MHA 1983).

The nearest relative can also appeal to a Mental Health Review Tribunal (MHRT) if they wish to challenge the Guardianship Order. The MHRT may end the Guardianship Order, decide not to end it, or make certain other orders. The MHRT must end the Guardianship if:

- At the time the MHRT considers the case, the person does not have mental illness or impairment, or psychopathic disorder
- The Guardianship Order is not necessary for the welfare of the person or for the protection of others.