

By: Head of Democratic Services & Local Leadership

To: Regulation Committee Mental Health Guardianship Panel – 21 January 2011

Subject: Terms of Reference

Classification: Unrestricted

Summary: To note the Panel's terms of reference. This report also provides a brief introduction to the new function.

1. Introduction

(1.1) The County Council agreed on 13 May 2010 to include the following new function in the Regulation Committee's Terms of Reference:-

“ the discharge of persons who are subject to guardianship, pursuant to Section 23 of the Mental Health Act 1983 on the recommendation of the Director of Adult Social Services.”

(1.2) The County Council also agreed that this function could be delegated to a Sub-Committee of at least three Members, one of whom should be a Member of the Regulation Committee and the others to be Members of the Adult Social Services POSC (who must not also be Members of a Foundation Trust). The decision to discharge must be agreed by at least three Members or where there are more Members on the Sub-Committee by a majority of the Panel.

2. Mental Health Guardianship

(2.1) Under Section 7 of the Mental Health Act 1983 (MHA 1983), applications for guardianship for any patient who has attained the age of 16 years, signed by two doctors and an Approved Mental Health Professional (AMHP) are received on behalf of KCC and entered into the Guardianship Register kept at County Hall. KCC as a guardian can require that the person subject to the guardianship lives in a certain place, accesses health professionals and attends appointments relating to their care and treatment.

(2.2) The Mental Health Act 2007 (MHA 2007) introduced changes in respect of guardianship orders and amended the regime for health authorities in discharging patients subject to guardianship. It also introduced the requirement for elected Members to “audit the effectiveness of receipt and scrutiny of documents and approve discharges from Guardianship.” The establishment of this Sub-Committee enables Members to consider applications under section 23 of the Mental Health Act 1983 to discharge a person from guardianship and also to regularly scrutinise the documentation in cases where there is no dispute (when the responsible Medical Officer has not asked for a renewal, so allowing the Order to lapse).

(2.3) The County Council decided that this function should come within the remit of the Regulation Committee, allowing it to convene an ad hoc Panel (Sub-Committee) to discharge this function. As Members with the most knowledge of social services mental health issues are likely to serve on the Adult Social Services Policy Overview and Scrutiny Committee it was agreed that the majority of the Panel would be made up of Members from that Committee. The Panel will be supported in coming to its decision by the presentation of reports and advice from an experienced officer from Kent Adult Social Services Directorate.

(2.4) KCC currently has some 50 to 60 people who are the subject of guardianship orders across the county. There have been several instances of people leaving Guardianship over the last three years. These have all been the result of the responsible Medical Officer not asking for a renewal. It is also necessary for the County Council to have a process for considering any applications that may arise where there is a dispute. On such occasions, the Panel will need to follow the Mental Health Act Code of Practice's five guiding principles. These are:-

- a) The Purpose Principle: Decisions under the Act must be taken to minimise the effects of mental disorder, maximise the safety and wellbeing of patients, promote recovery and protect people from harm;
- b) The Least Restriction Principle: The restrictions imposed on the patient's liberty must be kept to a minimum, having regard to the purpose for which the restrictions are imposed;
- c) The Respect Principle: The diverse needs, values and circumstances of each patient must be respected and recognised. These include their race, religion, culture, age, sexual orientation and disability. There must be no unlawful discrimination;
- d) The Participation Principle: Patients must be given the opportunity to be involved as far as is practicable in the circumstances in planning, developing and reviewing their own treatment and care in order to help ensure that it is as appropriate and effective for them as possible;
- e) The Effectiveness, Efficiency and Equity Principle: People taking decisions under the Act must seek to use the resources available to them and to patients in the most effective, efficient and equitable way in order to meet their needs and achieve the purpose for which the decision was taken.

3. Training

(3.1) The County Council agreed to arrange a training session to ensure that there was a pool of appropriately trained Members available to fulfil this role. Accordingly, a training session for Members took place on 9 August 2010. It was attended by three Members of the Regulation Committee (Mr Harrison, Mr Crowther and Mr Craske) and two Members of the Adult Social Services POSC (Mr Lake and Mr Koowaree). The latter is also a Member of the Regulation Committee.

(3.2) The training session was conducted by three KCC Officers: Mrs Mary Macdonald, Training Manager – Mental Health. She was supported by Mr Paul Absolon, Social Care Commissioner for Mental Health and Mr Chris Walters, Policy Officer - Mental Health.

(3.3) The session was arranged at short notice in order to enable the County Council to have a pool of Members to draw from in the event that a Panel needs to be convened in the near future. A further session has been arranged to take place on the morning of the first meeting of the Panel.

4. Likely workload

(4.1) The Panel will meet annually in the new year in order to receive a short report on the guardianship register.

(4.2) The Panel will also meet on those very rare occasions when there is a difference of opinion between medical staff and patients. In these instances an objective judgement by lay people is required on behalf of the community. It is estimated that the number of occasions per year on which the Panel has to convene for this purpose will be no more than two or three occasions and not at all in most years.

(4.3) In some cases when the Panel is asked to meet, there may well need to be a need for an urgent decision. This would require the Panel to be convened at very short notice, possibly more quickly than the five clear working days allowed for by the Access to Information Act.

5. Recommendation

(5.1) The Panel is invited to note the content of this report.

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Background Documents: Mental Health Act 1983 and Amendments 2007.