

By: Corporate Director, Families and Social Care

To: Regulation Committee Mental Health Guardianship Panel – 27 January 2012

Subject: Guardianship Register and Guardianship Review Panel

Classification: Unrestricted

Summary: Guardianship Register and Guardianship Review Panel: national trends and local activity between January 2011 – January 2012. This report outlines national trends and local activity relating to Section 7 of the Mental Health Act 1983 (amended 2007) during the past one year.

Introduction

1 (1) The purpose of this paper is to provide Regulation Committee Mental Health Guardianship Panel Members with an annual report on guardianship activity within the area of Kent. Guardianship enables service users to receive care in the community where it cannot be provided without the use of compulsory powers. It provides a framework, as part of the overall care and treatment plan, for working with a service user to achieve as independent a life as possible. Guardianship applies to those who are at least 16 years old and who are suffering from a mental disorder of a nature or degree which warrants reception into Guardianship.

(2) Under the Mental Health Act 1983 (MHA), a guardian can be appointed with limited powers to take decisions on a person's behalf, where these decisions are in the service user's best interest. Guardianship can be provided by either a local Social Services authority or a named individual. The guardian in 97% of cases overall is named as the Local Social Services Authority (LSSA).

(3) Section 7 of the MHA allows that an individual can be received into guardianship by the LSSA. The LSSA has a duty to hold a Panel to review Guardianship Orders and discharge these where appropriate. The MHA (S.23 (4) states that the power to discharge conferred under this Section must be exercised by 3 or more Members of the LSSA or by 3 or more Members of a Committee or Sub-Committee ("the guardianship").

(4) According to The Health and Social Care Information Centre (HSCIC) (2011) there is a steady decline in new cases of guardianship nationally. In Kent one new application for guardianship was received during the period under review. By contrast some authorities have no-one registered as being received into guardianship, or having continuous status under Section 7. Statistics for the South East suggest that activity is just below the national average, and this corresponds with local data.

(5) The introduction of Supervised Community Treatment Orders (Section 17A) and Deprivation of Liberty Safeguards would appear to offer alternative statutory frameworks for the provision of care and treatment within community settings, which could account for the decrease in usage of guardianship.

(6) The report from HSCIC notes that 53 cases have been updated in this year's national returns with a closed date prior to 1st April 2010. These updates, received from a number of LSSAs including Kent County Council, alter previously published figures for continuing and closed cases. This data reflects one of the main focuses of the Working Party (three officers from Kent Families and Social Care and two co-opted independent individuals), which is to ensure that the register is up to date and accurate.

(7) In pursuance of this objective the Families and Social Care Directorate's (FSC) Operational Support Policy Unit has implemented a clear process for recording all activity associated with guardianship interventions. Practice guidance setting out expectations when Section 7 is invoked has now been issued. Additionally practitioners are required to inform the keeper of the register of any changes by way of an altered circumstances proforma. A presentation outlining FSC's policy and practice framework for guardianship interventions was delivered to Approved Mental Health Professionals at an open forum in December 2011. Subsequently there has been significant progress towards achieving accurate intelligence in this area of practice, with improved awareness of required standards.

(8) An example of the latter came to light recently when a practitioner was instrumental in bringing about the discharge of a Guardianship Order by authority of the Responsible Clinician. This followed a very productive discussion at a panel meeting, which highlighted the need to end the Order as soon as it was no longer required and/or criterion for receipt into guardianship was no longer met. Nevertheless, it is necessary to remain vigilant of practice around guardianship and continue to quality assure this area of statutory activity, much of which is carried out by staff who are seconded to the provider organisation, namely Kent and Medway Partnership Trust.

(9) With the implementation of new arrangements for performance managing social care in mental health, a Head of Social Work was appointed by FSC. Consequently Paul Absolon has withdrawn as chair of the Guardianship Panel and Cheryl Fenton (Learning Disability and Mental Health Team) will take over as chair of future meetings, overseeing any process and performance issues. The Director of Operations for Learning Disability and Mental Health, Penny Southern, is now the nominated LSSA officer to receive applications and renewals for reception into guardianship on behalf of members. Otherwise, membership of the Panel remains unchanged with input from the MCA and MHA Training Manager, Mental Health Policy Officer, Administration Officer (and keeper of the register) and two lay members who alternate attendance, ensuring independent oversight.

(10) Finally, in order to continue improving process and arrangements for guardianship, the Panel intends to concentrate on three areas over the coming year. These are:

- Development of an information leaflet for service users and carers detailing statutory provisions under Section 7 of the MHA 1983 (amended 2007) and the right of appeal to a Mental Health Tribunal and to LSSA members respectively.
- Introduction of an electronic guardianship register held on a secure database. It is envisaged that this will have capacity for digital sign-off by Members. The rationale is to improve efficiency by reducing the need to hold a paper record. While it is

unlikely that all paperwork associated with the guardianship process can be eliminated, it will be possible to archive closed cases, the number of which currently stands at approximately 40.

- The Operational Support Unit will follow up published policy and practice guidance by surveying practitioners at intervals, receiving feedback and checking this against compliance rates.

Recommendation

2. (1) The Regulation Committee Mental Health Guardianship Panel is invited to Note the report and AGREE the proposed course of action set out in paragraph 1 (10) of the report.

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Background Documents: Mental Health Act 1983 and Amendments 2007.