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To: Regulation Committee Mental Health Guardianship Panel –
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Subject: Mental Health Guardianship

Classification: Unrestricted

Summary: This report explains the role of the Mental Health Guardianship Sub-Committee in relation to the County Council's duties under the Mental Health Act 1983.

Introduction

1.1 The purpose of this paper is to apprise Members of the work undertaken in relation to Kent County Council's duties under Sections 7 and 37 of the Mental Health Act 1983 (amended 2007). Section 7 of the Mental Health Act 1983 provides for guardianship under the auspices of a Local Social Services Authority (LSSA) (or a named individual) on the recommendation of two doctors and an application by an approved mental health professional or nearest relative. Under Section 37 a court can also make a guardianship order.

1.2 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 can apply to those aged 16 years and above who are suffering from a mental disorder of a nature or degree which warrants reception into guardianship.

1.3 Section 8 of the Act sets out the three powers conferred on the guardian. These are:

- The power to require the patient to reside at a specified place;
- The power to require the patient to attend specified places for medical treatment, occupation, education or training;
- The power to require access to a doctor, or approved mental health professional, or other specified person.

The Mental Health Guardianship Sub-Committee

2.1 In 2009 Kent County Council established a Mental Health Guardianship Panel (now Sub-Committee) for the purpose of quality assuring the guardianship process and data collection. This was required because under Section 23(2) an order for discharge can be made in respect of a patient who is subject to guardianship by the responsible clinician, by the Local Social Services Authority or by the nearest relative of the patient. Section 23 (4) sets out the framework for exercising the powers conferred by this section and Kent

County Council's Mental Health Guardianship Sub-Committee's arrangements conform to these provisions.

2.2 The LSSA is obliged to hold a register of those who are received into guardianship and must provide an annual report to the Department of Health detailing numbers of applications and renewals. The figures for Kent since the establishment of the Mental Health Guardianship Sub-Committee are set out in the table below.

Table 1

2009	48 cases
2010	44 cases
2011	32 cases
2012	19 cases

2.3 Table 1 shows a marked reduction in the number of guardianship cases held by KCC. This is reflective of a number of factors including the efforts undertaken by the Mental Health Guardianship Sub-Committee to improve data quality by implementing clear operational requirements for recording all activity associated with guardianship interventions, including discharges. Attached to this report at **Appendix 1** is the practice guidance that has been issued to seconded staff, including Approved Mental Health Professionals, working within the Kent and Medway Partnership Trust. A further piece of work in progress is an impact assessment of this practice guidance on practitioners in terms of whether it has been received and understood. The results, including analysis of data, will be complete and available in approximately four weeks.

2.4 The decline in the number of active guardianship cases is also indicative of the introduction of Supervised Community Treatment Orders under the Mental Health Act 1983 (amended 2007), and Deprivation of Liberty Safeguards under the Mental Capacity Act 2005 (amended 2007). Both represent alternative statutory frameworks for the provision of treatment and care of individuals within a community setting. However, the Mental Capacity Act 2005 would only apply where an individual is deemed to lack capacity in relation to a specific decision, for example where that individual will live.

2.5 In most cases the Mental Capacity Act 2005 will not apply when an individual is assessed as eligible under the provisions of the Mental Health Act 1983, or where the invocation of a deprivation of liberty safeguards authorisation would conflict with an existing order under the Mental Health Act 1983. Nevertheless, there are examples of both Acts operating in conjunction in relation to one individual. A Kent service user on the current guardianship register is also subject to a deprivation of liberty safeguard. The latter gives authority to implement a very robust care plan that aims to protect members of the public. Without these arrangements the service user would in all likelihood require an admission to a secure unit that imposed even greater restrictions.

2.6 This case illustrates the least restrictive imperative, and it is clear that practitioners need to be conversant and able to engage with the most appropriate legislative framework when making complex decisions. This is because any interference by a public authority in the right to liberty under Article 5 of the Human Rights Act 1998 must be undertaken in adherence to a process prescribed by the law and this includes the right to appeal against a statutory decision that places restrictions on an individual, such as those imposed by order of guardianship under Section 7. To ensure that service users who are received into

guardianship by Kent County Council and their families and/or carers fully understand their rights to appeal, an information leaflet has been devised, based on a Department of Health exemplar. A copy is attached with this report at **Appendix 2** containing information regarding process for appeal, right to complain and right to have access to statutory advocacy.

2.7 A key function of the Mental Health Guardianship Sub-Committee involves scrutiny of statutory paperwork and quality assurance in relation to practice. Plans are in place to audit Approved Mental Health Professionals' reports which detail the decision-making process. The results of this will inform future training needs. For example, a particularly challenging area is the interface between the Mental Health Act 1983 and the Mental Capacity Act 2005, which remains somewhat difficult to navigate for practitioners in terms of understanding when the provisions of each statute should apply where they appear to overlap. The Mental Health Guardianship Sub-Committee has a critical role in monitoring any emerging themes of this nature, and works with health and social care good practice groups to promote professional competence across all sectors.

2.8 In conclusion the Mental Health Guardianship Sub-Committee continues to safeguard the rights and needs of vulnerable individuals who have been taken into guardianship by Kent County Council in the interests of their health, safety or for the protection of others. It is essential that there is a framework for overseeing the discharge of the LSSA's powers and duties under Sections 7 and 37 of the Mental Health Act 1983 (amended) in order to assure compliance with statutory provisions under applicable legislation, not least the Human Rights Act 1998.

Recommendation

3.1 The Regulation Committee is invited to Note the work of the Mental Health Guardianship Sub-Committee in ensuring the County Council's compliance with the Mental Health Act 1983.

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Background Documents: Mental Health Act 1983 and Amendments 2007.