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Ask for: Andrew Tait  
Date: 12 February 2019

Dear Member

**REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP SUB-COMMITTEE -  
TUESDAY, 12 FEBRUARY 2019**

I am now able to enclose the presentation slides which were shown to the Regulation Committee Mental Health Guardianship Sub-Committee at its meeting on Tuesday, 12 February 2019. These were considered as part of the following report:

**Agenda Item No**

3

**The Local Authority's Guardianship Register (Pages 3 - 20)**

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ben Watts', is written over a faint, illegible printed name.

Benjamin Watts  
General Counsel

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By: Assistant Director Mental Health – Kent County Council

To: Regulation Committee Mental Health Guardianship Sub-Committee  
– 12<sup>th</sup> February 2019

Subject: The Local Authority’s Guardianship Register

Classification: Unrestricted

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Summary: To report on the work of the Guardianship Quality and Scrutiny Panel during 2018. A list of closed cases since January 2018 and the current guardianship register are enclosed for information.

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## 1. Introduction

- (1.1) The Kent County Council’s Regulation Committee Mental Health Guardianship Sub-Committee was instituted in recognition of the duty of the responsible Social Services Authority to review guardianship orders and discharge them if appropriate, in compliance with amendments to the Mental Health Act 1983 that were introduced in 2007. 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 Regulation Committee’s arrangements conform to these provisions. The function is delegated to a sub-committee of at least 3 members. One is a Member of the Regulation Committee and the others, Members of the Adult Social Care and Health Cabinet Committee.
- (1.2) The amendments to the Mental Health Act in 2007 also introduced the requirement for Elected Members to “audit the effectiveness of receipt and scrutiny of documents”. A working party of officers has been set up to carry out these duties. The acceptance of new guardianship orders or the renewal of existing guardianship orders is undertaken by the Assistant Director of Mental Health on behalf of Kent County Council. Guardianship training has been provided for the Regulation Committee. This was last provided on 19<sup>th</sup> January 2018.
- (1.3) This report is to inform Elected Members of the current state of the authority’s Guardianship Register and the work of the officers’ working party during 2018. It contains the list of closed cases during 2018 and the current guardianship register at **Appendix 1** and a summary of Guardianship activity for the reporting period at **Appendix 2**.

## 2. The Working Party

- (2.1) The working party is made up of three officers from the directorate of Adult Social Care and Health and the quality lead officer for the Approved Mental Health Professional (AMHP) service. It is supported by an administrator and has met on two occasions since January 2018. Since it was established the working party has carried out a great deal of work to introduce robust processes and guidance to review and maintain high quality practice and accurate recording and reporting of guardianship orders.
- (2.2) A key role of the working group is to provide assurance that the named officers responsible for scrutinising applications for new orders and renewals have done so in a robust and informed manner. Training relating to the scrutiny role for Guardianship was provided to responsible officers and members of the Guardianship Quality and Scrutiny Panel during 2018. This is provided annually.
- (2.3) Since January 2018 one guardianship order has been discharged and one guardianship order has been renewed. There has been one new guardianship order accepted. There are currently two people subject to guardianship in Kent. Kent County Council is required to provide the Department of Health with data on those subject to guardianship on a bi-annual basis. The last submission of data was on 11 June 2018 for the period 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018. At this time, it was reported that one new order had been accepted during this period and three orders had been discharged.
- (2.4) The Department of Health have moved to bi-annual collection and publication of national Guardianship data. The latest data available is for the period April 2016 to March 2018. This indicates that the use of Guardianship continues to decline in England. New cases totalled 105 in 2017-18 and 140 in 2016-17, compared to 430 in 2007-2008. Numbers of continuing cases open at the year-end is also falling, as cases close and fewer new cases are opened. As at March 2018, 300 people in England were subject to a Guardianship order, 25% fewer than at the same point the last time the data was published in 2015. This is the eleventh consecutive year of decline in continuing cases. Of the 152 local social services authorities in England only 59 reported new cases in 2017-2018 and 59 in 2017-18. The decline in the use of Guardianship orders may in part be due to the availability of other mental health legislation.
- (2.5) An essential right for individuals under the Mental Health Act is to have a "Nearest Relative" whose views are sought and who has powers under the Act. During 2018 officers of Kent County Council have worked in partnership with colleagues from the Kent and Medway NHS and Social Care Trust to finalise the policy, protocols and processes to ensure individuals have a Nearest Relative and to establish a register of those individuals where:
- the Nearest Relative has delegated their functions to the Kent County Council
  - the Nearest Relative has delegated their functions to another individual

- the individual either does not have a Nearest Relative or their Nearest Relative cannot perform the functions and therefore the Court has appointed Kent County Council
- the individual does not have a Nearest Relative or their Nearest Relative cannot perform the functions and therefore the Court has appointed an individual

In addition, Kent County Council have introduced measures to ensure timely applications to the Court to appoint Kent County Council as the Nearest Relative where required. There are currently 21 people for whom Kent County Council is appointed the Nearest Relative.

- (2.6) Since the last annual report to the regulation committee on 19th January 2018 there has not been the need for Members to be asked to adjudicate a disputed case, nor indeed have they been asked to discharge an order in accordance with their powers under Section 23(4) of the MHA 1983 (amended 2007).

### **3. Summary**

- (3.1) In summary there are robust processes in place for the review of guardianship orders, including renewals, that gives consideration to the least restrictive options available with the authority to make appropriate recommendations for discharge.

### **4. Recommendation**

- (4.1) The Mental Health Guardianship Sub- Committee is invited to note the content of this report together with the list of closed cases since January 2018, the current Guardianship registers (Appendix 1) and the activity during 2018 (Appendix 2).

Cheryl Fenton Assistant Director Mental Health  
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Appendix 1

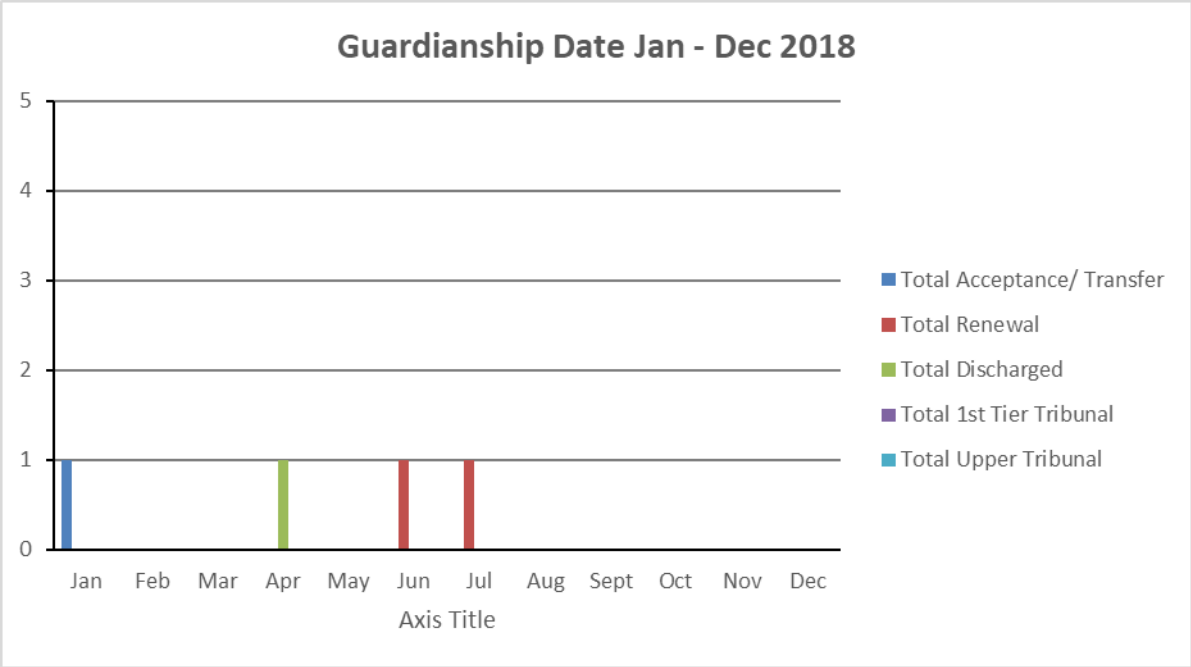
Discharged Guardianship Cases Jan – Dec 2018

Status	DoH No.	DOB	Origin	Gender	Expiry date:	Mental Disorder	Guardianship start date	1st Renew	2nd Renewal (six months)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Discharge Date	Length in years on Register
Closed	145	05/05/1993	White British	M	midnight 12.05.18	Mental Impairment	13/05/2013	13/11/2013	13/05/2014	13/05/2015	13/05/2016	13/05/2017	Discharged 11/04/2018	11/04/2018	4.83

Guardianship Register as at 21/01/2019

Status	DoH No.	DOB	Origin	Gender	Expiry date:	Mental Disorder	Guardianship start date	1st Renew	2nd Renewal (six months)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Discharge Date	Length in years on Register
Open	147	14/03/1972	White British	M	midnight 06.06.19	Mental Impairment	07/06/2013	07/12/2013	07/06/2014	07/06/2015	07/06/2016	07/06/2017	07/06/2018		5.58
Open	155	04/05/1979	White British	F	midnight 25/01/20	Learning Disability	26/01/2018	26/07/2018	26/01/2019	Start date if renewed 26/01/2020					0.92

Appendix 2



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# Guardianship Orders

(Mental Health Act 1983, amended 2007)

## Presentation to Regulation Committee Mental Health Guardianship Sub Committee

**Cheryl Fenton**

Head of Mental Health Social  
Work

12<sup>th</sup> Feb 2019

# Guardianship

## Contents

- Mental Health Act Definitions And Requirements
- KCC And Elected Members Responsibilities
- Delegation Of Members Responsibilities
- Cost
- Prevalence data
- Case Study

# Guardianship

## Section 7 MHA 1983 (amended 2007)

- Applies to people 16 years old and above
- Applies to people suffering from a mental disorder of a nature or degree which warrants their reception into Guardianship and it is necessary in the interests of the welfare of the patients or the protection of the other persons. It therefore applies to people with a mental illness including dementia. A diagnosis of learning disability is not sufficient and needs to be associated with “abnormally aggressive or seriously irresponsible conduct”
- Enables service users to receive care in the community where it cannot be provided without the use of compulsory powers
- An application for Guardianship is made by an Approved Mental Health Professional (AMHP) based on 2 medical recommendations
- The application is received by KCC and entered into the Guardianship Register

# Guardianship

## Section 7 MHA 1983 (amended 2007)

- The Guardian can require that the person subject to Guardianship:
  - Lives in a certain place
  - Attends for medical treatment, occupation, education or training
  - Allows access to them by a medical practitioner or other professionals
- Usually, the Local Social Service Authority (LSSA) becomes the Guardian, however the LSSA can appoint someone else to be the Guardian
- An application for Guardianship **cannot** proceed when the person identified as the nearest relative exercises their right to object
- A Guardianship order must be reviewed regularly and renewed at intervals of 6 months, 6 months then yearly from the date on which the original order was accepted by the LSSA

# Guardianship

## KCC and Elected Members Responsibilities

- To receive a person into Guardianship
- To hold a register of those received into Guardianship and provide an annual report to DoH detailing the numbers of applications and renewals
- To act as a Guardian – delegated to a Mental Health Social Worker
- To appoint a Guardian – other than KCC
- The Mental Health Act 2007 introduced the requirement for Elected Members to “audit the effectiveness of receipt and scrutiny of documents and approve discharges from Guardianship.”

# Guardianship

## KCC and Elected Members Responsibilities

- Regulatory committee terms of reference includes the function to “discharge persons who are subject to Guardianship, pursuant to Section 23 of MHA 1983 on the recommendation of the Director of Adult Social Services.”
- This function is delegated to a sub-committee of at least 3 members. One is a member of the regulation committee and the other, members of the Adult Social Services Policy Overview and Scrutiny Committee
- When considering discharge or circumstances where there is a dispute, the sub committee should satisfy themselves that the grounds for continued Guardianship are met and should follow the MHA Code of Practice and guiding principles:

# Guardianship

- **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
- **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
- **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.
- **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.
- **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.

# Guardianship

## Cost of Guardianship

Example: Guardianship order of 2 years duration

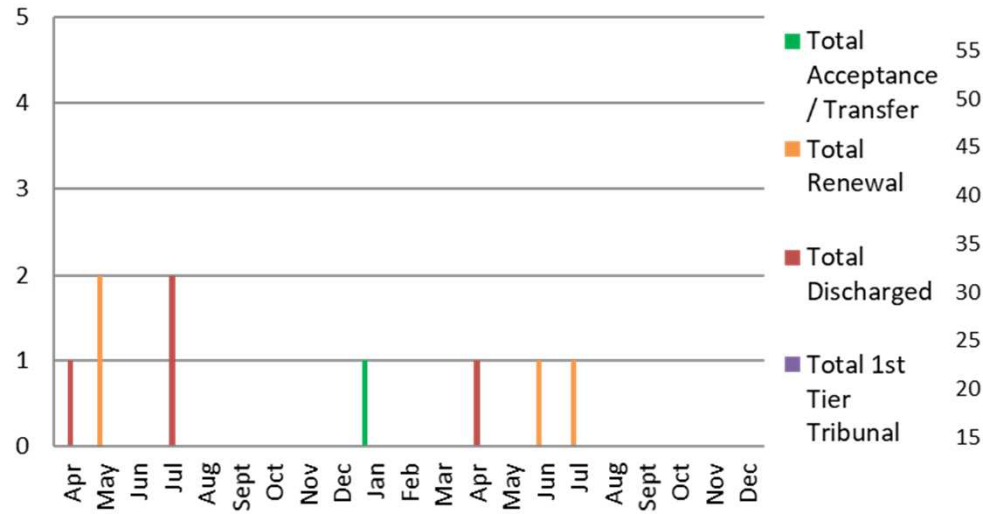
Task	Resource	Cost
Initial Assessment	2.5 days AMHP (KR10) 0.5 days backup (KR08)	£448 £67
	<b>Total</b>	<b>£515</b>
Review – at least once every 3 months	8x 0.5 days AMHP (KR10)	£717
	<b>Total</b>	<b>£717</b>
Formal review with a view to renewal	3 x 2 days AMHP (KR10) 3 x 0.5 day Back Up (KR08)	£1076 £200
		£1276
	<b>OVERALL TOTAL</b>	<b>£2508</b>

**Note:** Section 117 MHA “after care” will apply where a person has previously been subject to detention in hospital under sections 3, 37, 45A, 47, 48 of MHA

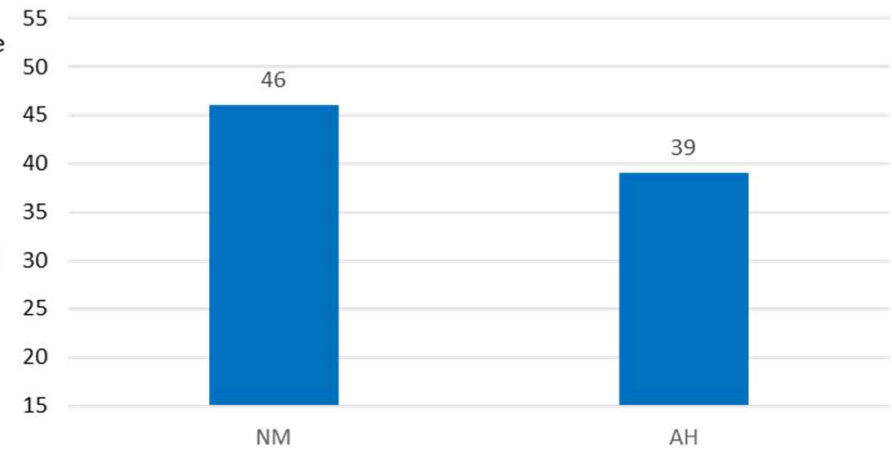


# Guardianship Data

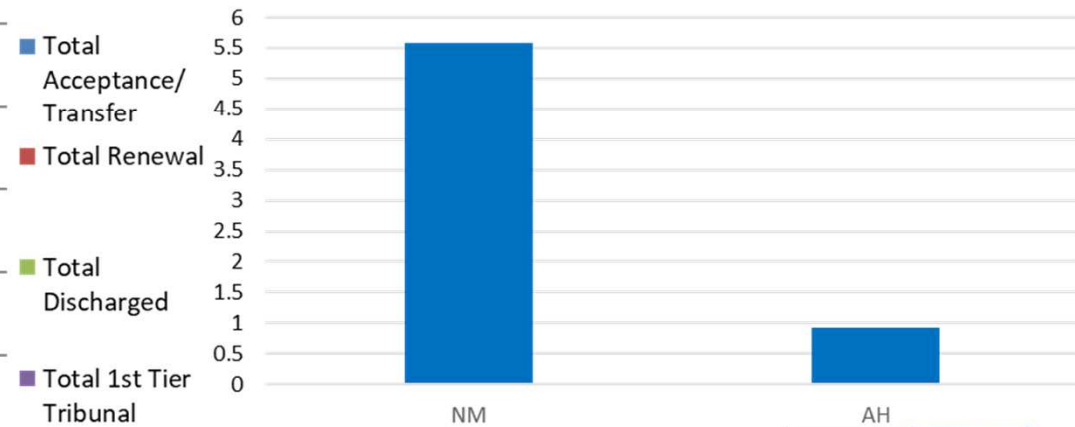
Guardianship Data Apr 17 - Mar 18



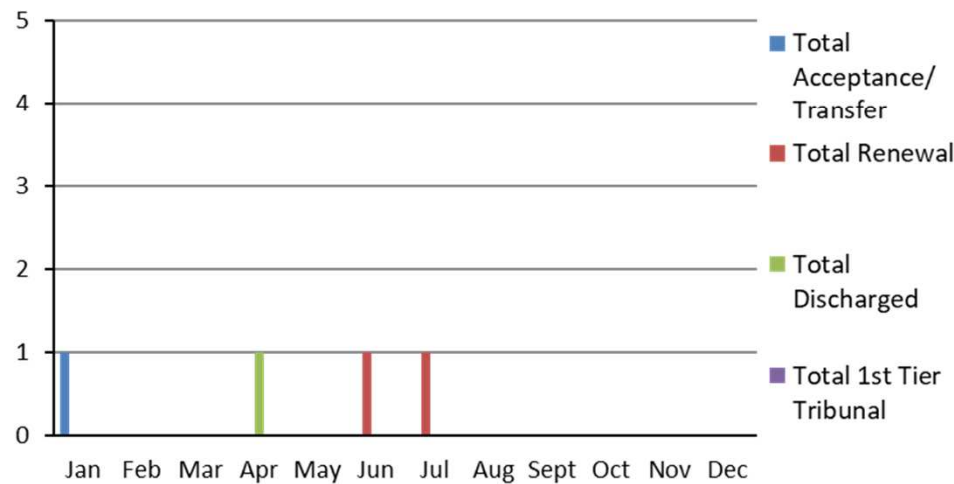
Current Guardianship Register by Age



Current Length of Time on Guardianship Register In Years



Guardianship Data Jan - Dec 2018



## National Prevalence Data

- New case totalled 105 in 2017-18 and 140 in 2016-17 , compared to 430 in 2007-2008 , indicating that Guardianship continues to decline in England.
- Numbers of continuing cases open at the year-end is also falling, as cases close and fewer new cases are opened. As at March 2018, 300 people in England were subject to a Guardianship order, 25% fewer than at the same point the data was published in 2015.
- Of the 152 local social services authorities in England only 59 reported new cases in 2017-2018.
- The decline in the use of Guardianship orders may in part be due to the availability of other mental health legislation.

# Guardianship

## Case Study: Julie

- 62 year old woman referred to MH services while sleeping in a multi- story car park with no access to money, occasionally accepting help and food from a charity
- Admitted to acute mental health care , detained under the Mental Health Act after several years of homelessness & disengaging from services. She became an informal patient once she had settled
- She has a diagnosis of schizophrenia for which she receives medication but has long standing delusions regarding owning several properties and being of royal German descent. She has no identity papers & believes that she does not have any living relatives & so cannot substantiate her beliefs
- An application for LA housing failed , she refused to live in certain areas, she did not meet the criteria for residential care , applications were made to 6 supported accommodation providers but were unsuccessful due to her level of need. She was finally accepted by a supported accommodation provider. She however continues to state that she would like to move to one of her properties
- She is considered to have capacity
- Julie was assessed at being of high risk of self neglect and exploitation by others

# Guardianship : Case Study: Julie

- Julie's mental health remained unstable and it was thought that she could relapse
- An application for Guardianship was made to
  - Provide statutory authority for Julie to be returned to the placement should she go absent. The residence power allows the Guardian to discourage a patient from sleeping rough
  - Provide Julie with community based occupation and activity to encourage integration with the community
  - To ensure access to Julie by support workers to help her to improve her self care and hygiene
- Principles :
  - Purpose : settled in community with improved quality of life
  - Least restrictive : freedom in the community whilst being kept safe
  - Respect : choice to not return to an area she did not like
  - Participation : Julie's wishes were taken into account. She agrees with the Guardianship order but would like regular reviews
  - Effectiveness , Efficiency and Equality : Cost effective. Placement funded via housing benefit
- Julie was discharged from Guardianship following a period to settle her in her new accommodation. The onward plan is for her to be supported to live more independently.