



AGENDA

REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP SUB-COMMITTEE

Wednesday, 4 March 2020 at 1.45 pm
Council Chamber, Sessions House,
County Hall, Maidstone

Ask for: **Andrew Tait**
Telephone: **03000 416749**

Membership (13)

Conservative (11): Mr A H T Bowles (Chairman), Mr M J Angell, Mr M A C Balfour, Mrs P M Beresford, Mrs S Chandler, Mrs P T Cole, Miss E Dawson, Ms S Hamilton, Mrs L Hurst, Ms D Marsh and Mr M J Northey

Liberal Democrat (1): Mr S J G Koowaree and Ida Linfield

Labour (1) Mr J Burden

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

Item No

- 1 Substitutes
- 2 Declarations of Interest by Members for items on the agenda
- 3 Minutes - 19 February 2019 (Pages 1 - 4)
- 4 The Local Authority's Guardianship Register (Pages 5 - 8)
- 5 Other items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Benjamin Watts,
General Counsel
03000 4168146

Tuesday, 25 February 2020

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

**REGULATION COMMITTEE MENTAL HEALTH GUARDIANSHIP
SUB-COMMITTEE**

MINUTES of a meeting of the Regulation Committee Mental Health Guardianship Sub-Committee held in the Council Chamber - Sessions House on Tuesday, 12 February 2019.

PRESENT: Mr A H T Bowles (Chairman), Mrs A D Allen, MBE, Mrs C Bell, Mrs P M Beresford, Mrs P T Cole, Ida Linfield and Ms D Marsh

ALSO PRESENT: Mr G K Gibbens

IN ATTENDANCE: Mrs C Fenton (Assistant Director Mental Health) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Minutes - 19 January 2018

(Item 2)

RESOLVED that the Minutes of the meeting held on 18 January 2018 are correctly recorded and that they be signed by the Chairman.

2. The Local Authority's Guardianship Register

(Item 3)

(1) The Assistant Director Mental Health gave a presentation. The slides are contained within the electronic agenda papers on the KCC website.

(2) The Assistant Director Mental Health said that the Mental Health Guardianship Act 1983 (amended in 2007) was currently under review. It currently applied to people aged 16 and above who suffered from a mental disorder of a nature or degree warranting their reception into Guardianship and it was necessary in the interests of the welfare of the patients or the protection of other persons. It applied to people with a mental health illness, including dementia. A diagnosis of learning disability was not sufficient and needed to be associated with "abnormally aggressive or seriously irresponsible conduct." The Act enabled service users to receive care in the community where it could not be provided without the use of compulsory powers. An application for Guardianship was made by an Approved Mental Health Professional (AMHP) based on 2 medical recommendations. Once made, the application was received by KCC and entered into the Guardianship Register.

(3) The Assistant Director Mental Health continued that the Guardian could require the person subject to Guardianship to live in a certain place; attend medical treatment, occupation, education or training; and allow access by a medical practitioner or other professional. The Local Social Services Authority was usually appointed as the Guardian, but it could appoint someone else. An application for Guardianship could not proceed when the person identified as the nearest relative

objected. A Guardianship Order had to be reviewed regularly and renewed every 6 months and then yearly from the date on which the original Order was accepted.

(4) The Assistant Director Mental Health then said that KCC had the responsibility to receive a person into guardianship; to hold a register and provide a bi-annual report to the DoH detailing the numbers of applications and renewals. She added that the 2007 amendments to the Mental Health Act had introduced the requirement for elected members to “audit the effectiveness of receipt and scrutiny of documents and to approve discharges from Guardianship.”

(5) The Regulation Committee’s Terms of Reference included the function to “discharge persons who are subject to Guardianship, pursuant to Section 23 of the Mental Health Act 1983 on the recommendation of the Director of Disabled Children, Adults Learning Disability and Mental Health. This function was delegated to a Sub-Committee of at least three Members. One of these should be a Member of the Regulation Committee and the others, Members of the Adult Social Care Cabinet Committee.

(6) The Assistant Director Mental Health said that when considering whether to discharge the Sub-Committee should satisfy itself on whether the grounds for continued Guardianship were met and should follow the MHA ‘s Code of Practice and guiding principles. These were:

- The Purpose Principle;
- The Least restriction Principle;
- The Respect Principle;
- The Participation Principle; and
- The Effectiveness, Efficiency and Equity Principle.

(7) The Assistant Director Mental Health broke down the cost of a Guardianship Order over two years. This comprised the Initial Assessment, the three-monthly reviews and the Formal Review with a view to renewal. The total cost was £2508.

(8) The Assistant Director Mental Health then gave anonymised data for the individuals subject to guardianship between April 2017 and December 2018.

(9) The Assistant Director Mental Health moved on to give national statistics. There had been a total of 105 new cases in 2017-18 and 140 in 2016-17. When compared to the 430 new cases in 2007-2008, it could be seen that the use of Guardianship was continuing to decline in England. The number of continuing cases open at the year-end was also falling, as cases closed and fewer new cases were opened. 300 people in England were subject to a Guardianship order in March 2018 representing a 25% reduction from the last time was published in 2015. There were 152 local social services authorities in England of whom only 59 had reported new cases in 2017-2018. She said that the decline in the use of Guardianship orders might, in part, be due to the availability of other mental health legislation.

(10) The Assistant Director Mental Health moved on to give a brief overview of her report. She informed Members that the Working Party (3 officers from the Adult Social Care and Health Directorate and the Quality Lead Officer from the Approved Mental Health Professional (AMHP) Service) had met on two occasions since January 2018. Training relating to the scrutiny role for Guardianship had been

provided to responsible officers and members of the Guardianship Quality and Scrutiny Panel during the year and would be widened in 2019.

(11) The Assistant Director Mental Health drew attention to paragraph 2.5 of her report and underlined the great importance of the function of the Nearest Relative in the Guardianship process. She asked the Sub-Committee to note that the Nearest Relative was entitled to delegate the function to another individual or to Kent County Council.

(12) The Assistant Director Mental Health concluded her presentation by saying that robust processes were in place for the review of guardianship orders.

(13) RESOLVED that the content of the report be noted for assurance together with the list of closed cases since January 2018, the current guardianship registers (set out in Appendix 1) and the activity in 2018 (set out in Appendix 2).

This page is intentionally left blank

By: Assistant Director Mental Health – Kent County Council

To: Regulation Committee Mental Health Guardianship Panel – 4 March 2020

Subject: The Local Authority’s Guardianship Register

Classification: Unrestricted

Summary: To report on the work of the Guardianship Quality and Scrutiny Panel during 2019. The current guardianship register is enclosed for information.

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. Should an individual who is subject to Guardianship request that KCC exercise its power to discharge, this sub-committee would be supported by officers.
- (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.
- (1.3) The Assistant Director of Mental Health on behalf of the Elected Members also reviews whether Guardianship is still required or if the individual should be discharged whenever the Responsible Clinician submits a report for renewal. The Guardianship Panel of officers reviews this decision as soon as practicable following the renewal.

- (1.4) 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 2019. It contains the current guardianship register and a summary of Guardianship activity for the reporting period at **Appendix 1**.

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 2019. 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 2019. This is provided annually.
- (2.3) Since January 2019 there has been one Guardianship order accepted and then subsequently discharged. In addition, there have been renewals of two guardianship orders, one of which was subsequently discharged during the year. This leaves one person currently 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 1st April 2016 to 31st March 2018. At this time, it was reported that two new orders had been accepted during the period and six 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 2016-17. 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. 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 22 people for whom Kent County Council is appointed the Nearest Relative.

(2.6) Since the last annual report to the regulation committee on 12th February 2019 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 give consideration to the least restrictive options available with the authority to make appropriate recommendations for discharge.

4. Recommendation

(4.1) The regulation committee is invited to note the content of this report together With the current Guardianship register and the activity during from January 2019 – February 2020 (Appendix 1).

Cheryl Fenton Assistant Director Mental Health
Tel No: (03000 415310)
E-mail: Cheryl.fenton@kent.gov.uk

Appendix 1

Guardianship Register as at 12 February 2020

DoH N	Origin	Gender	Expiry date	Mental Disorder	Guardianship start date	1st Renew	2nd Renewal (six months)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)	Renewed (yearly)
147	White British	M	midnight 06.06.20	Mental Impairment	07/06/2013	07/12/2013	07/06/2014	07/06/2015	07/06/2016	07/06/2017	07/06/2018	07/06/2019	Start date if renewed 07/06/2020

