

By: Corporate Director – Families and Social Care

To: Regulation Committee Mental Health Guardianship Sub-Committee – 30th January 2013

Subject: The Local Authority's Guardianship Register

Classification: Unrestricted

Summary: To note the work of the working party to review Guardianship Orders. The list of closed cases since January 2012 and the current guardianship register are enclosed for information.

1. Introduction

(1.1) The Kent County Council's Regulation Committee Mental Health Guardianship Sub-Committee has been instituted in recognition of the duty of the responsible Social Services Authority to review Guardianship Orders and discharge if appropriate, in compliance with amendments to the Mental Health Act 1983 that were introduced in 2007. To expedite this, a working party of officers has been set up to carry out these duties. This report is to inform Members of the current state of the authority's Guardianship Register, highlighting the review process and outcomes. It also contains the list of closed cases at **Appendix 1** and the current guardianship register at **Appendix 2**.

2. The Working Party

(2.1) The working party is made up of three officers of Kent Adult Social Services and two co-opted independent members who have had recent operational management experience within mental health. It is supported by a part time administrator and has met on six occasions since January 2012 at bi monthly intervals.

(2.2) At the beginning of January 2012 there were 22 people subject to Guardianship Orders across Kent. One of the tasks of the working party has been to investigate whether Orders have lapsed or a person subject to an Order has died. This process has been in place since 2009 when there were 48 people identified as subject to Guardianship. Often practitioners and teams have had difficulty in tracing the progress of a Guardianship Order (i.e. where an Order had been invoked several years previously and the Approved Social Worker had left the team). The working party has been able to rationalise the register, having obtained up to date information from community mental health team managers, hospital managers and practitioners. During 2012 11 old cases of this kind have been traced and closed. There are 4 cases of this kind outstanding and work is underway to locate archived case notes and work with the local community teams to close them. This has been a critical feature of the work around Guardianship practice as the administrator, who is also the

keeper of the register, is obliged to provide the Department of Health with precise data on those subject to Guardianship on an annual basis. The last submission to the Department of Health was for the period 01/04/11 to 31/03/12 and reported 2 new cases and the closure of 14 cases.

(2.3) During 2012 there have been 5 new Guardianship applications and 4 existing Guardianship orders have been renewed. There are currently 13 people on the Guardianship register.

(2.4) During 2012 the process for members of the working party to scrutinise Guardianship applications and renewals plus accompanying papers, has been reviewed and improved. This has included an extension to back up arrangements for scrutiny and acceptance of guardianship orders on behalf of Kent County Council.

(2.5) The working party continues to use an audit trail once Guardianship has been invoked, so that there is a properly and accurately maintained record of this particular statutory activity. Through this process we have been able to promote best practice amongst professionals, encouraging positive decision-making where a subject of Guardianship no longer requires the framework that this Order provides (rather than simply allowing the Order to lapse).

(2.6) The working party has supported practitioners and teams by devising a proforma with which to report the current status of a Guardianship Order. Practitioners responsible for invoking and/or renewing Guardianship Orders are invited to attend review meetings to participate in the review process on an individual case basis. An up to date social circumstances report is requested in advance so that the working party is able to consider all relevant information, including any recent developments.

(2.7) During 2012 a request was received from a court for an assessment for Guardianship to be undertaken in relation to someone who had been brought before them. Subsequently the working group has produced a clear referral pathway for the courts.

(2.8) In order 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. This contains information regarding the process for appeal, the right to complain and the right to have access to statutory advocacy.

(2.9) Under section 29 of the Mental Health Act 1983 (amended 2007) a person's nearest relative may be displaced and their powers under the Mental Health Act removed. In cases such as this , or where an person does not have a nearest relative (within the terms of the Mental Health Act) , section 29 further provides for a local authority to assume the role of the nearest relative. Guidance is currently being developed to assist practitioners in

carrying out the requirements of section 29. These will be available within the next two months.

(2.10) Under section 66 of the Mental Health Act 1983 (amended 2007) a person who is subject to Guardianship may apply to the Mental Health Review Tribunal. Under section 72 of the Mental Health Act 1993 (amended 2007) the Mental Health Review Tribunal may discharge a person from Guardianship if they are not satisfied that the legal requirements and original grounds for reception into guardianship continue to apply. During 2012 the working party has been aware of requests by solicitors for copies of Guardianship Orders in order to consider applications to the Mental Health Review Tribunal in relation to 2 people. The working group is also aware that an application was made in relation to one of these people. The working group intends to introduce a more robust process to monitor the number and outcome of applications to the Mental Health Review Tribunal.

(2.11) There has been no 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 the existing arrangements for overseeing Guardianship Orders provides a mechanism for reinforcing legally compliant interventions and upholding the principles of best practice arrangements. They provide for an accurate record of those currently subject to Section 7 of the Mental Health Act 1983 (amended 2007) within the responsibility of Kent County Council. Robust processes are in place for the review and quality assurance of Guardianship Orders, including renewals, which give consideration to the least restrictive options available, with the authority to make appropriate recommendations for discharge. These processes and relevant guidance have been reviewed and developed to improve clarity and understanding. It is anticipated that over the next year processes will continue to be further improved.

4. Recommendation

(4.1) The Sub-Committee is invited to note the content of this report together with the lists of closed cases since January 2012 (Appendix 1) and the current guardianship register (Appendix 2).

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Background Documents: Mental Health Act 1983 and Amendments 2007.