

Guardianship

Section 7

Mental Health Act 1983

(Amended 2007)

Serving Kent, serving you



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| Owner: | Cheryl Fenton, Head of Mental Health Disabled Children, Adults Learning Disability and Mental Health Directorate (LD/MH) Fourth Floor, Invicta House, Sandling Road, Maidstone, Kent, ME14 1XX 03000 417100 MHGuardianship@kent.gov.uk |
| Date | February 2016 |
| Prepared By | Catriona Brodie Policy and Standards Officer (Mental Health) |
| Approved By | Penny Southern, Director of Disabled Children, Adults Learning Disability and Mental Health |

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Glossary

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|-------------------|---|
| AMHP | Approved Mental Health Professional |
| AWOL | Absent Without Leave |
| CNP | Complex Needs Panel |
| CoP | Code of Practice |
| CPA | Care Programme Approach |
| CTO | Community Treatment Order |
| DoL | Deprivation of Liberty |
| Head of MH | Head of Mental Health |
| IMHA | Independent Mental Health Advocate |
| KCC | Kent County Council |
| KMPT | Kent and Medway NHS and Social Care Partnership Trust |
| LSSA | Local Social Services Authority |
| MCA | Mental Capacity Act 2005 |
| DC, LD/MH | Director for Disabled Children, Adult Learning Disability and Mental Health |
| MHA | Mental Health Act |
| MHRT | Mental Health Review Tribunal |
| NMA | Nominated Medical Attendant |
| NR | Nearest Relative |
| PAT | Professional Assurance Team |
| RC | Responsible Clinician |

Policy

1. Introduction

1.1. This policy is in accordance with the recommendations made in the Mental Health Act 1983 Code of Practice (CoP, 2015) namely, that:

“Each Local Social Services Authority (LSSA) should establish a policy setting out the arrangements for: receiving, scrutinising and accepting or refusing applications for guardianship” (CoP, 30.16).

“LSSAs should have policies for the action to be taken when they (or a private Guardian) become aware that a (service user) is Absent Without Leave (AWOL) from the place where they are required to live” (CoP, 28.13).

1.2. **The purpose of Guardianship** is to enable service users to achieve as independent a life as possible within the community, with the minimum of constraint (CoP, 30.4).

1.3. Where an individual has been assessed as lacking capacity Guardianship **must not** be used to impose restrictions that amount to a Deprivation of Liberty (DoL).

Please note: the DoLs ‘**acid test**’ refers to 2 questions:

(a) is the person **free to leave?** – by definition if they are subject to Guardianship they are not

(b) is the person subject to **continuous supervision and control?** (CoP, 13.44)¹

1.4. Guardianship **does not** give anyone the right to treat the service user without their permission or consent (CoP, 30.5 & 30.6).

1.5. A Guardian may be a LSSA or some else approved by a LSSA (a “*Private Guardian*”) (CoP, S.30.3). Where a Private Guardian has been proposed the LSSA must satisfy itself that this person is capable of carrying out their functions and should support them in this role (CoP, 30.24 & 30.22).

1.6. A Guardian takes precedence over an Attorney/Deputy appointed under the Mental Capacity Act 2005 (MCA) and the Court of Protection in deciding where a service user should live (CoP, 30.3).

1.7. The Guardian should appreciate any special disabilities and needs of the service user and promote their physical **and** mental health. They should also, advocate on behalf of the service user in relation to those agencies whose services are needed to carry out the care plan (CoP, 30.23).

¹ For further information please see: P v Cheshire West and Chester Council and another; P & Q v Surrey County Council, 2014 (<http://www.kent.gov.uk/social-care-and-health/information-for-professionals/mental-capacity-act>)

1.8. This policy should be read in conjunction with the Approved Mental Health Professional (AMHP) Practice Guidance (<http://knet/directorate/FSC%20policies/Forms/OP%20SDS%20Issue.aspx>)

2. Criteria

2.1. The criteria for Guardianship are laid down in the Mental Health Act (MHA) namely, that a service user is:

“Suffering from a mental disorder of a nature or degree which warrants his reception into guardianship...and it is necessary in the interests of the welfare of the patient...or for the protection of other persons” (MHA, S.7(2) & CoP, S.30.8).

2.2. It can be applied **only** to those who are over the age of 16 and who are not a ward of court.

2.3. A diagnosis of a learning disability is **not** in itself sufficient and needs to be associated with *“abnormally aggressive or seriously irresponsible conduct”* (MHA, S.1).

2.4. Guardianship is social care-led and is primarily focussed on the **welfare needs** of the service user (CoP, 31.3). So in cases where there is a specific need for the service user to continue to receive **medical treatment and** it might be necessary to **recall** them to hospital **quickly**, a Community Treatment Order (CTO) will probably be more appropriate (CoP, 31.7).

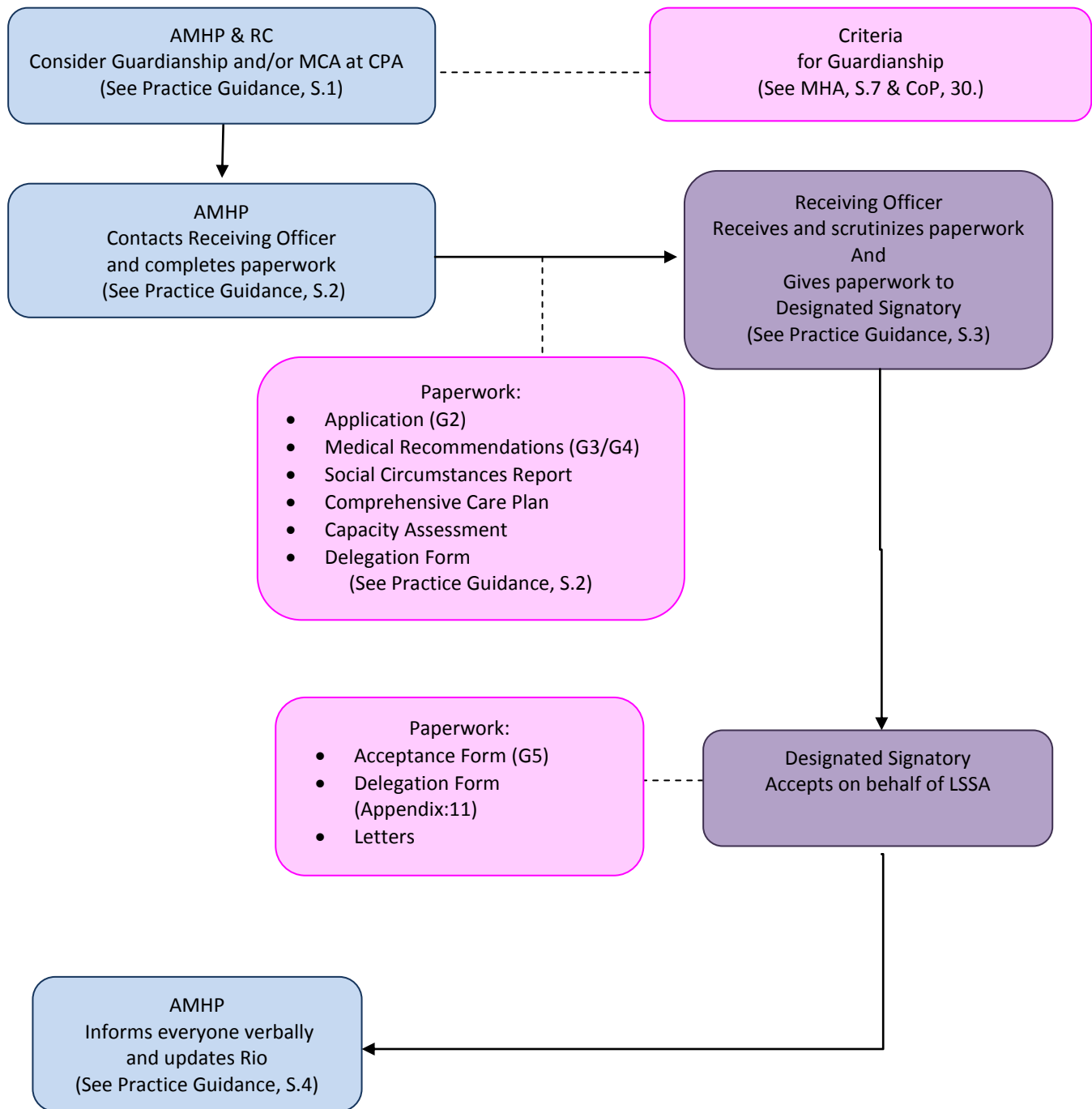
2.5. It is essential to consider whether the objectives of the care plan can be achieved in another less restrictive way (CoP, 1. & 30.10). So in cases where a service user lacks capacity to make some or all of the important decisions concerning their own welfare, one potential alternative is to rely solely on the MCA (CoP, 30.10 & 30.11).

2.6. When Guardianship is being used to require a service user to reside in a certain place it is still essential to consult them first, unless their mental health makes that impossible (CoP, 30.29). So in those cases where the service user lacks capacity to make the decision about where to live it might be preferable to seek a decision from the Court of Protection (CoP, 30.14).

Please note: Although Guardianship **cannot** be used to require a service user to live in a situation in which they are DoL it is possible for Guardianship to exist alongside a DOLs (CoP, 30.32).

Practice Guidance

1. Procedure for Making New Applications



1.1. The AMHP/NR can:

- Make an application for Guardianship (MHA, S.11(1))

Please note: an AMHP is usually the more appropriate applicant (CoP, 14.30 & 14.50).

1.2. The AMHP will:

- At the point of **considering** making a new application contact:

The Head of Mental Health

who will act as the “*Receiving Officer*” on behalf of the LSSA and will also nominate someone on her behalf. S/he can be contacted via:

The Mental Health Professional Assurance Team (PAT),
Disabled Children, Adults Learning Disability & Mental Health Directorate
(DC/LD/MH)
Fourth Floor, Invicta House, Sandling Road,
Maidstone, Kent, ME14 1XX
03000 417100

1.3. The AMHP should:

- In part base their decision to make an application for Guardianship on a multi-disciplinary/ multi-agency Care Programme Approach (CPA) planning/ review meeting (CoP, 34.8 & 30.20).

1.4. The AMHP should:

- Where possible (unless there is a good reason) see the service user jointly with at least one of the two doctors (CoP, 14.45). However, in cases where this is not feasible the AMHP should have a discussion with both doctors about their assessment (CoP, 14.46).

1.5. The AMHP should:

- Ensure at least one of the doctors is approved (MHA, S.12) and where practicable, at least one has previous acquaintance with the service user (CoP, 14.73 & 14.74).

1.6. The AMHP will:

- Where possible secure the attendance of the person (e.g. a familiar person or advocate) who the service user wants to be present during the assessment

Please note: Consideration must be given at the earliest possible stage to involve an Independent Mental Health Advocate (IMHA)

(Website: www.kentadvocacy.org.uk or Phone: 0300 34 35 714)

1.7. The AMHP should:

- Always give the service user the opportunity to talk to them alone (CoP, 14.53 & 14.55).

1.8. The AMHP must:

- Consult with the NR **before** making their application unless:
 - it is not reasonably practicable
 - there is not sufficient information to establish their identity or location
 - the NR's own health or mental incapacity prevents this
 - it would have a detrimental impact on the service user
 - (European Convention of Human Rights 1998 (ECHR): Article 8; MHA, S.11(4); CoP, 14.59 - 14.61).

Please note: The AMHP should consider all the circumstances of the case and the decision to **not** consult should not be taken lightly (CoP, 14.62)

1.9. The AMHP cannot:

- Proceed with the application for Guardianship if the NR objects (MHA, S.11(4)(a); CoP, 14.65).

Please note: Where this occurs the AMHP must consider whether to apply to the County Court for the NR's displacement (MHA, S.29(3)(b) or (c); CoP, 14.65 & 5.11 - 5.24). For further advice see the "**Policy and Guidance on the Nearest Relative**" <http://staffzone.kmpt.nhs.uk/amhp>

1.10. The AMHP should:

- Also consult:
 - where appropriate with the service user's carer, other relevant relatives or friends
 - where possible with other people who have been involved with the service user's care
 - an attorney or deputy appointed under the MCA who has authority to make decisions about the service user's personal welfare (CoP, S.14.66, S.14.68 - S.14.70).

Please note: the service user's **carer** may or may not be the NR and it is essential their needs are not only assessed but also, where relevant, support is provided to meet their needs (CoP, 4.42; Care Act 2014, C.10 & C.20).

1.11. The AMHP must:

- Seek the agreement of the doctor who will act as Responsible Clinician (RC) at the earliest opportunity particularly, when responsibility for the service user is changing from one clinician to another (CoP, 34.11).

Please note: There is a template letter for the RC to confirm responsibility (Appendix: 1)

1.12. The AMHP must:

- Ensure the Complex Needs Panel (CNP) has **already** given approval for the appropriateness of the residential placement and the service manager has **already** given approval for the funding. This is particularly important when Guardianship is being used to require the service user to reside there.

Please note: A service user under Guardianship may still be asked to fund or contribute to the funding of their placement except if they are eligible for S.117 After-

care or Continuing Health Care. Alternatively, they may choose to “top-up” if subject to S.117

1.13. The AMHP will:

- Where appropriate, assess the “**suitability**” and “**willingness**” of an individual to fulfil the role of a Private Guardian (MHA Memorandum; Mental Health Regulations, S.5(1)(b))

1.14. The RC must:

- Give reasons for their opinions stated in their recommendations.

Please note: It is not sufficient to simply record a diagnostic classification of a mental disorder but rather both the symptoms and the behaviour the service user is exhibiting must be provided (CoP, 14.75).

1.15. The AMHP must:

- Base their application (**Form G2**) on two medical recommendations (**Joint: Form G3** or **Single: Form G4** – all forms can be found at <http://staffzone.kmpt.nhs.uk/amhp>).

2. Paperwork for new applications

2.1. The AMHP will:

- In cases where the LSSA is the Guardian complete the application form with:
“*The Guardian*” as **Kent County Council**

“*The Address*” of KCC as **County Hall, Maidstone, Kent. ME14 1XQ.**

Please note: DO NOT identify any specific individual (MHA, S.7(5)). Also, photocopies of the original blank forms (Mental Health Regulations 1983: Forms G1 – G10) or computer-generated versions **can** be used (CoP, 35.3).

2.2. The AMHP will:

- Complete a **Social Circumstances Report (Template, Appendix: 2)** to support their application and for what this should include please see below

Please note: The AMHP must provide a signed copy

2.3. The AMHP will:

- Explicitly evidence throughout their report all five of the **Guiding Principles** (CoP, 1.2 – 1.21) illustrating how they have informed their decision-making process (CoP, 1.23).

Please note: All five of the principles are of equal importance (CoP, 1.23)

2.4. The AMHP will:

- Clearly document in their report that consideration has been given to the service user’s **capacity** (MCA, S.2).

2.5. The AMHP will:

- In cases where the service user lacks the capacity to decide where they can live and the power of Guardianship is being used “to require (them) to reside at a place specified by the Guardian” record why relying solely on the MCA is **not** appropriate (CoP, 30.11).

Please note: it is essential that the start date of the placement, how long funding has been agreed for, the review date by the CNP and where appropriate, the start date of the DoLs are also clearly recorded.

2.6. The AMHP will:

- Include a section outlining **the risks** and what the predicted outcome(s) will be for the service user if Guardianship is **not** implemented

2.7. The AMHP will:

- Clearly outline their rationale for how they have identified who the NR is (MHA, S.26; CoP, S.14.57).

Please note: Where the NR has delegated their role to another person a copy of the **Nomination Form** must accompany this report (Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, S.24) (See the “**Policy and Guidance on the Nearest Relative**” <http://staffzone.kmpt.nhs.uk/amhp>).

2.8. The AMHP will:

- Provide a “**comprehensive care plan**” (CoP, 30.20) to support their application and for what this should include please see (CoP, 34)

Please note: It is essential that the care plan identifies the services needed by the service user, which of the powers of Guardianship are necessary to achieve the plan (CoP, S. 30.21) and whether there are parts of it requiring **continuous supervision and control**.

2.9. The AMHP will not:

- Print off a copy of the service user’s Care Plan or Risk Assessment from RiO and enclose these **without** the service user’s permission.

2.10. The AMHP must:

- Send a draft copy of the Social Circumstances Report and the Care Plan to **the AMHP Quality Assurance Manager** prior to submitting it to the LSSA.

2.11. The AMHP will:

- Provide the service user with a copy of their Social Circumstances report as soon as it is available (CoP, 4.52 & 38.28).

Please note: In cases where it is decided that certain information **should not** be shared with the service user it is helpful to use the same guiding principles provided by Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

2.12. The AMHP will:

- Complete **Part 2 of the Internal Nomination Form (Template, Appendix: 3)**

3. Procedure for the receiving and scrutinising

3.1. The AMHP will:

- Arrange to meet with the Receiving Officer to enable the paper work to be “**received**” and “**scrutinized**”

Please note: The AMHP also has a legal responsibility to scrutinize the documents prior to submitting them to the LSSA.

3.2. The AMHP will:

- In the event of one of the medical recommendations being **invalid** complete a new application.

Please note: Unlike applications for admission to hospital, there is no procedure for obtaining a new medication recommendation (Reference Guide to the MHA, 19.59)

3.3. The AMHP may:

- In the event of an application being **rejected** by the LSSA wish to seek legal advice regarding their “**independent role**” and application (please consult with the “**Policy on Accessing Legal Advice**” <http://knet/directorate/SCHW-documents/Pages/SC-policies.aspx>)

Please note: the LSSA is under no obligation to accept an application (Reference Guide to the MHA, 19.48).

4. Procedure following acceptance

4.1. The AMHP will:

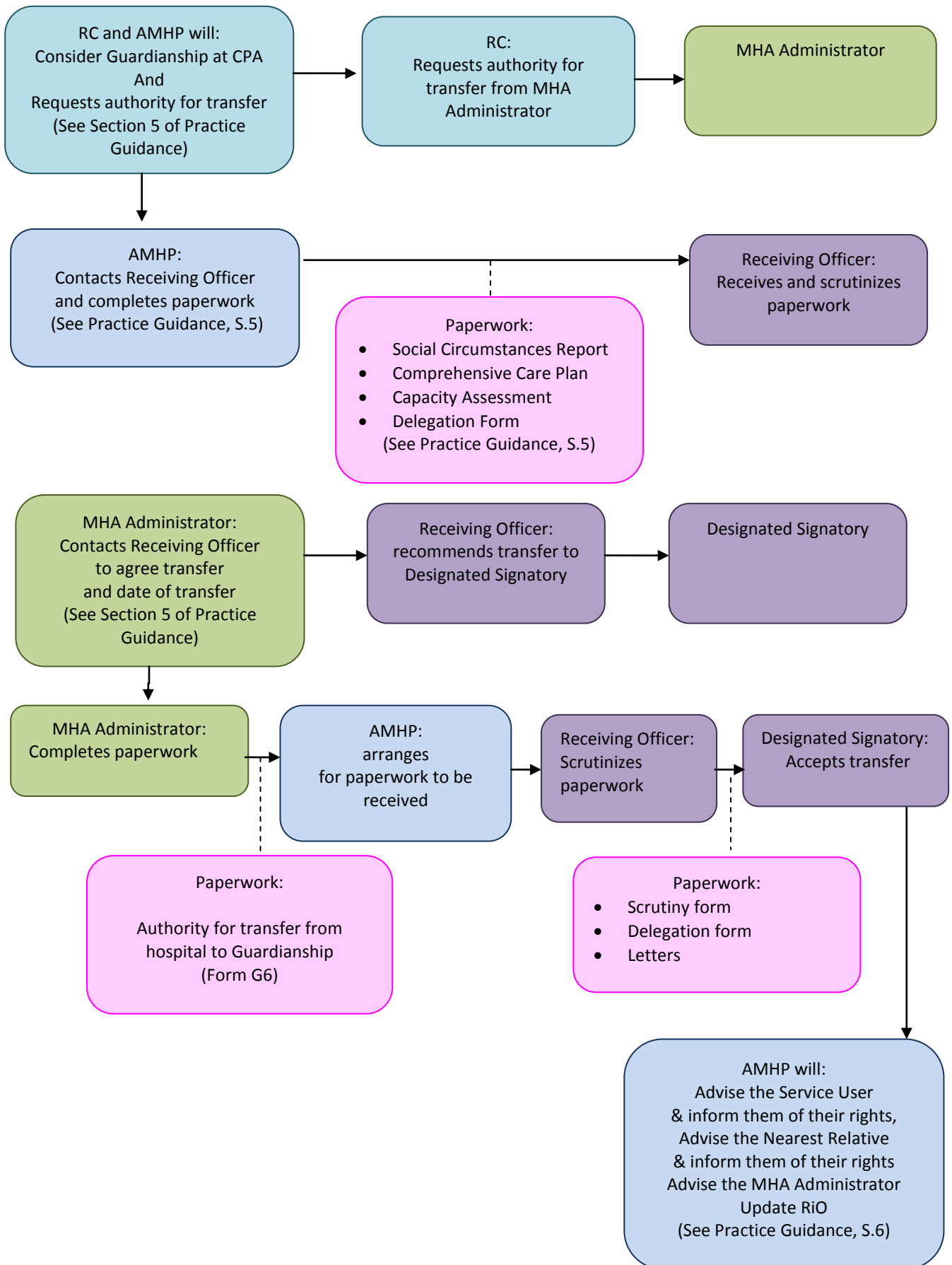
- Advise the service user they are now subject to Guardianship and inform them of their right of appeal (CoP, 26.15)
- Advise the service user of their right of legal representation and access to an IMHA in order to assist them to appeal (CoP, 26.15).
- Support the service user to access these advocacy services where necessary (CoP, 26.15)
- Advise the NR and inform them of their rights in particular, their power to discharge (MHA, S.132)
- Up-date Rio in particular, the care plan and complete an MH1

Please note: In cases where the service user lacks capacity the AMHP will make the referral to the IMHA service on their behalf

4.2. The AMHP will:

- **Follow the Procedure for Monitoring (See Section 9, page 19)**

5. Procedure for Transfers from hospital to Guardianship



5.1. The AMHP will:

- At the point of **considering** a transfer contact:

The Head of MH

who will act as the “*Receiving Officer*” on behalf of the LSSA and nominate someone in her absence. S/he can be contacted via:

The Mental Health Professional Assurance Team (PAT),
Disabled Children, Adults Learning Disability and Mental Health Directorate
(DC/ALD/MH)
Fourth Floor, Invicta House, Sandling Road,
Maidstone, Kent, ME14 1XX
03000 417100

5.2. The RC and the AMHP should:

- In part base their decision to make a transfer to Guardianship on a multi-disciplinary/ multi-agency CPA planning/ review meeting (CoP, 34.8 & 30.20).

5.3. The AMHP should:

- Where possible (unless there is a good reason) see the service user jointly with the RC (CoP, 14.45) but also, always give the service user the opportunity to talk to them alone (CoP, 14.53 & 14.55).

5.4. The AMHP will:

- Where possible secure the attendance of the person (e.g. a familiar person or advocate) who the service user wants to be present during the assessment

Please note: Consideration must be given at the earliest possible stage to involve an IMHA Website www.kentadvocacy.org.uk or phone **0300 34 35 714**

5.5. The AMHP must:

- Consult with the NR **before** making their application unless:
 - it is not reasonably practicable
 - there is not sufficient information to establish their identity or location
 - the NR’s own health or mental incapacity
 - it would have a detrimental impact on the service user
 - (European Convention of Human Rights 1998: Article 8)
(MHA, S.11(4); CoP, 14.59 - 14.61).

Please note: The AMHP should consider all the circumstances of the case and the decision to **not** consult should not be taken lightly (CoP, 14.62)

5.6. The AMHP cannot:

- Proceed with the transfer to Guardianship if the NR objects (MHA,S.11(4)(a); CoP, 14.65).

Please note: Where this occurs the AMHP must consider whether to apply to the County Court for the NR’s displacement (MHA, S.29(3)(b) or (c); CoP, 14.65 & S.5.11 - S.5.24). For further advice see the “**Policy and Guidance on the Nearest Relative**” <http://staffzone.kmpt.nhs.uk/amhp>

5.7. The AMHP should:

- Also consult:
 - where appropriate with the service user's carer, other relevant relatives or friends
 - where possible with other people who have been involved with the service user's care
 - an attorney or deputy appointed under the MCA who has authority to make decisions about the service user's personal welfare (CoP, 14.66; 14.68 - 14.70).

Please note: *the service user's carer may or may not be the NR and it is essential their needs are not only assessed but also, where relevant, support is provided to meet their needs (CoP, 4.42; Care Act 2014, C.10 & C.20).*

5.8. The AMHP must:

- Seek the agreement of the doctor who will act as RC at the earliest opportunity particularly, when responsibility for the service user is changing from one clinician to another (CoP, 34.11).

Please note: **Template letter for acceptance of RC responsibility (Appendix: 1)**

5.9. The AMHP must:

- Ensure the Complex Needs Panel (CNP) has **already** given approval for the appropriateness of the residential placement and the service manager has **already** given approval for the funding. This is particularly important when Guardianship is being used to require the service user to reside there.

Please note: *A service user under Guardianship may still be asked to fund or contribute to the funding of their placement except if they are eligible for S.117 After-care or Continuing Health Care. Alternatively, they may choose to "top-up" if subject to S.117*

5.10. The AMHP will:

- Where appropriate, assess the **"suitability"** and **"willingness"** of an individual to fulfil the role of a Private Guardian (MHA Memorandum; Mental Health Regulations, S.5(1)(b))

5.11. The AMHP will:

- Complete a **Social Circumstances Report (Template, Appendix: 2)** to support the transfer and for what this should include please see **(Practice Guidance, S.2, pg 10)** above.

Please note: *As the service user is being transferred under MHA, S.19 the RC does **not** complete a medical recommendation and the AMHP does **not** complete an application.*

5.12. The AMHP must:

- Send a draft copy of the Social Circumstances Report and the Care Plan to **the AMHP Quality Assurance Manager** prior to submitting it to the LSSA.

5.13. The AMHP will:

- Send the **Social Circumstances Report** to the Receiving Officer via email

Please note: The AMHP must provide a signed copy

5.14. The AMHP will:

- Complete **Part 2 of the Internal Nomination Form (Template, Appendix: 3)**

5.15. The AMHP may:

- In the event of an application being **rejected** by the LSSA wish to seek legal advice regarding their **“independent role”** and application (please consult with the **“Policy on Accessing Legal Advice”**

<http://knet/directorate/SCHW-documents/Pages/SC-policies.aspx>

Please note: the LSSA is under no obligation to accept

5.16. The AMHP will:

- Notify the RC of the LSSA’s decision

5.17. The RC will:

- Contact **the MHA Administrator** to request the transfer

Please note: the MHA Administrator keeps a list of all those who can act as a Designated Signatory on behalf of the Hospital Managers. Although the CoP allows for this to be the service user’s RC (CoP, 30.24) KMPT’s Scheme of Delegation does not.

5.18. The RC may:

- Where appropriate (and when the suitability of the placement has already been agreed by the CNP and the funding has already been agreed by the service manager) transfer the service user to the identified residential placement (MHA, S.17) for a short period of time **prior to the date of transfer** into Guardianship (Mental Health Regulations 2008, Reg.7(4)).

5.19. The MHA Administrator will:

- Contact the Receiving Officer to formally request the transfer, **agree the date** and complete Part 1 of the authority for transfer (**Form G6**, <http://staffzone.kmpt.nhs.uk/amhp>)

Please note: The date of the transfer will be agreed on the basis of what is in the best interests of the service user.

5.20. The MHA Administrator will:

- Submit copies of the medical recommendations and the application for this particular admission to hospital (MHA, S.3 and where appropriate MHA, S.2 as well) along with the Form G6.

5.21. The AMHP will:

- Arrange to meet the Receiving Officer by **the next working day at the latest** to enable the Form G6 to be **“received”** and **“scrutinized”**.

Please note: The AMHP also has a legal responsibility to scrutinize the documents prior to submitting them to the LSSA.

6. Procedure following transfer

6.1. The AMHP will:

- Advise the service user
- Advise the service user of their right of legal representation and access to an IMHA in order to assist them to appeal (CoP, 26.15).
- Support the service user to access these advocacy services where necessary in particular, when they lack capacity (CoP, 26.15)
- Advise the NR and inform them of their rights in particular, their power to discharge (MHA, S.132)
- Up-date Rio in particular, the care plan and complete an MH1

Please note: In cases where the service user lacks capacity the AMHP will make the referral to the IMHA service on their behalf

6.2. The AMHP will:

- Follow the **Procedure for Monitoring** (see below Practice Guidance, S.9, page 19)

7. Requests by a Court (MHA, S.37)

7.1. A Magistrates Court or a Crown Court has:

- The power to use Guardianship as a disposal in a criminal proceeding but **only** where the statutory criteria has been met (MHA, S.37 (2)) **and** when the person is convicted of an imprisonable offence (other than murder).

7.2. The Court cannot:

- Proceed without the agreement of the LSSA/ the Private Guardian (MHA, S.37 (6)).

Please note: the offender's consent is **not** required

7.3. The Court should:

- Make its request in writing to:

The Head of MH

who will act as the "Receiving Officer" on behalf of the LSSA and will nominate someone in their absence. S/he can be contacted via:

The Mental Health Professional Assurance Team (PAT),
Disabled Children, Adults Learning Disability and Mental Health Directorate
(DC/ALD/MH)
Fourth Floor, Invicta House, Sandling Road,
Maidstone, Kent, ME14 1XX
03000 417100

7.4. The Receiving Officer will:

- Liaise with the Service Manager of the Community Mental Health Team (Younger Adults) in the locality where the defendant **ordinarily resides**.

7.5. The Service Manager will:

- Appoint an AMHP to carry out this piece of work **as soon as possible** as the Court will normally adjourn up to 28 days.

7.6. The AMHP will:

- Consider all the circumstances of the case (please see above Practice Guidance S.1)

Please note: the RC does **NOT** complete a medical recommendation and the AMHP does **NOT** complete an application.

7.7. The AMHP will:

- Complete a Social Circumstances Report to support their recommendation (for what this should include please see above Practice Guidance, **S.2**, pg 10-12 and the **Template** for this is attached as **Appendix: 2**).

7.8. The AMHP will:

- Also include in their report:
 - the offender's suitability for Guardianship
 - the risks relating to their offending behaviour
 - the evidence from the two doctors

7.9. The AMHP will:

- Send a draft copy of the Social Circumstances Report and the Care Plan to the **AMHP Quality Assurance Manager** prior to submitting it to the LSSA.

7.10. The AMHP will:

- Send the final copy of the Social Circumstances Report to the Receiving Officer

Please note: The AMHP must provide a signed copy

7.11. The AMHP will:

- Complete the first part of the **Internal Nomination Form (Delegation Form, Appendix: 3)**

7.12. The AMHP may:

- In the event of an application being **rejected** by the LSSA wish to seek legal advice regarding their **"independent role"** and application (please consult with the **"Policy on Accessing Legal Advice"** <http://knet/directorate/FSC%20policies/Forms/FSC%20Legal.aspx>).

Please note: The LSSA is under no obligation to accept

8. Procedure following acceptance

8.1. The AMHP will:

- Advise the service user they are now subject to Guardianship and inform them of their right of appeal to a higher court
- Advise the service user of their right of legal representation and access to an IMHA in order to assist them to appeal (CoP, 26.15).
- Support the service user to access these advocacy services where necessary in particular, when they lack capacity (CoP, 26.15)
- Advise the NR and inform them they have no power to discharge
- Up-date Rio in particular, the care plan and complete an MH1

***Please note:** In cases where the service user lacks capacity the AMHP will make the referral to the IMHA service on their behalf*

8.2. The AMHP will:

- Follow **the Procedure for Monitoring** (please see below Practice Guidance, S.9)

9. Procedure for monitoring of Guardianship

9.1. The duties of the LSSA as Guardian are laid out in the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, S.23 and can be delegated to any officer or person (Local Government Act 2000)

***Please note:** The one exception to this is the power to discharge (MHA, S.23)*

9.2. KCC has:

- Chosen to delegate its duties of Guardianship to a Mixed Role AMHP in the locality where the service user ordinarily resides

***Please note:** This is particularly important in cases where the service user is **not** under the KMPT's Community Recovery Service Line (Younger Adults Mental Health) and possibly has a health Care Coordinator.*

9.3. The AMHP must:

- Complete the **First Part of the Internal Nomination Form (Appendix: 3)** and submit this to the Receiving Officer along with all the other paperwork
- Ensure a smooth transition of their responsibility occurs to another AMHP when transferring the service user's case
- Complete a new Internal Nomination Form at the point of this transition

9.4. The AMHP must ensure the service user:

- Understands the powers of Guardianship, their right of appeal (**Application Form (Appendix: 4)**) and their right to support for this by an Advocate (**Information Leaflet on Guardianship (appendix: 5)**, **Leaflet on IMHA (Appendix: 6)**, **Advocacy Information Leaflet (appendix: 7)** and **referral form (Appendix:8)** <http://staffzone.kmpt.nhs.uk/amhp>)
- Understands who their Nearest Relative is and their rights and responsibilities (**Easy Read Leaflet on Nearest Relative (appendix: 9)** <http://staffzone.kmpt.nhs.uk/amhp>)

- Understands the power of the LSSA to return them to their specified place of residence should they go AWOL. (**AWOL Leaflet Appendix: 10**)
- Understands exactly what action will be taken in the event of them going AWOL (**please see below, Practice Guidance, S.10, pg 20**).
- Is visited at regular intervals but at the minimum **every 3 months**” (MHA, S.116; Mental Health Regulations 2008: S.23 (a)).
- Is visited whenever they are admitted to hospital, whether this is for their mental disorder (formally or informally) or for any other reason (MHA: S.116 (2) (b)).
- Is provided with regular multi-disciplinary CPA reviews but **at least once** during the period of Guardianship

9.5. The AMHP must ensure:

- An RC is appointed (Reference Guide to the MHA, S.19.73) and completes the form agreeing to accept this responsibility (**RC Responsibility Form, Appendix: 1**)
- The new RC agrees at the earliest opportunity whenever this responsibility is being transferred and completes the form
- The RC visits the service user at regular intervals but **at least once** during the period of Guardianship

Please note: *In circumstances where there is a dispute about who the RC is, the AMHP will escalate this in the usual way to KMPT Senior Management.*

9.6. The AMHP must:

- Regularly review the need for the service user to remain under Guardianship
- Recommend to the RC at the earliest opportunity its discharge.
- Maintain detailed records on Rio of all actions taken and changes in circumstances.
- Ensure Rio highlights that the LSSA also holds a case record
- Ensure the LSSA is informed of any significant changes to the service user’s circumstances in particular, a change of their NR or placement

10. Procedure for when a service user is Absent Without Leave (AWOL)

10.1. The LSSA can:

- Take a service user to the place they are required to live for **the first time** if they do not or cannot go there themselves (MHA, S.18(7))
- **Return** the service user to that place if they leave without the permission of the Guardian (MHA, S.18(3)).

Please note: *In cases where the service user lacks capacity it may be more appropriate to initially take them there under (MCA, S.5).*

10.2. A service user should:

- Have a care plan, which sets out the agreed arrangements for them accessing the community and any contact with their family and/ friends.
- Have it documented in their care plan the risks should they go AWOL

10.3. A service user is:

- Considered to be AWOL whenever they go absent without the Guardian's permission from any place the Guardian has required them to live (Reference Guide to the MHA, S.19.86).

Please note: A service user **can** be regarded as AWOL if their absence from their residence is outside of these arrangements. However, in most cases it should be clear they have left the specified placement to go and live somewhere else.

10.4. The LSSA can:

- Only return the service user within the period of Guardianship or within 6 months (whichever is the later)
- Extend the Guardianship for a week if the service user returns within a week of the expiry date

Please note: if a service user returns outside of these time scales the Guardianship will expire and **cannot** be renewed.

10.5. The manager of the home must:

- Ensure a thorough search of the premises and the grounds is immediately carried out
- Contact the AMHP as soon as, it is clear the service user is AWOL

Please note: in the event of the AMHP being absent the Service Manager of the CMHT in that locality must ensure another Mixed Role AMHP is appointed to manage this situation.

10.6. The AMHP will:

- Decide whether it is appropriate to extend the service user's leave if they have not returned on time.

10.7. The AMHP must:

- Inform the Receiving Officer and the AMHP Service Manager as soon as possible.

10.8. The Head of MH will:

- Authorise the AMHP to return the service user (MHA, S.18(4)) **(Authorisation to return form, Appendix: 11)**

10.9. The AMHP will:

- Visit the service user with another member of their CMHT (preferably their Care Coordinator if this is not the AMHP) in the event their whereabouts are known.

Please note: The police should only be contacted to assist in returning the service user only if necessary

10.10. The AMHP will:

- Inform the police if the service user is known to be particularly vulnerable or a risk to others

10.11. The AMHP will:

- Consider exercising their powers under (MHA, S.135(2)) if denied access
- Consider exercising their powers under (MHA, S.129) if they are denied access to the premises by a third party

10.12. The AMHP will:

- Assess whether the service user has the capacity to decide to return of their own free will or not.

10.13. The AMHP will:

- Remind the service user of the LSSA's power as Guardian to require them to return

10.14. The AMHP will:

- Decide the most appropriate method of conveyance depending on the risk including

For further guidance please see "Transporting Patients Policy – KMPT
<http://staffzone.kmpt.nhs.uk/Downloads/staffzone/clinical-policies/2013V1.00PatientTransportPolicy.pdf>

Please note: The police should only be requested to assist and only if necessary

10.15. The AMHP will:

- Review the service user's care plan with them and identify specific actions, which should be taken if this were to happen again

Please note: This is essential even in those situations where the service user returns of their own free will.

10.16 The AMHP will:

- Record all instances of the service user going AWOL in their notes

10.17. The LSSA will:

- Consider changing the AMHP who is acting as Guardian on its behalf if the service user consistently resists the exercising of any of their powers

10.18. The RC will:

- Consider discharging the service user from Guardianship if after changing the Guardian they still consistently resist.

11. Procedure for transfer from Guardianship to hospital

11.1. A service user can be informally admitted to hospital in the same way as anyone else and they will remain subject to Guardianship

11.2. In the event that an informal admission is not appropriate an application for DoLs, or an application for MHA, S.2/S.4 can still be made and the service user will remain subject to Guardianship.

11.3. In the event that the service user needs to be admitted to hospital under MHA, S.3 Guardianship will automatically end (CoP, 30.36).

11.4. The AMHP will:

- arrange for the service user to be assessed under the MHA in the usual way (see above, Practice Guidance S.1, pg 7-10)

Please note: the NR has no right to object to the transfer but can discharge the service user from Guardianship (MHA, 19(2)(b))

11.5. The LSSA will:

- Ensure that arrangements are made for the service user to be admitted to hospital within 14 days from the last medical examination

11.6. The Designated Signatory will:

- Complete Part 1 of Form G8 – <http://staffzone.kmpt.nhs.uk/amhp>

12. Procedure following transfer

12.1. The AMHP will:

- Advise the service user
- Advise the service user of their right of legal representation and access to an IMHA in order to assist them to appeal (CoP, 26.15).
- Support the service user to access these advocacy services where necessary in particular, when they lack capacity (CoP, 26.15)
- Advise the NR and inform them of their rights in particular, their power to discharge (MHA, S.132)
- Up-date Rio in particular, the care plan and complete an MH1

Please note: In cases where the service user lacks capacity the AMHP will make the referral to the IMHA service on their behalf

12.2. The AMHP will:

- Follow the **Procedure for monitoring** (see above, Practice Guidance, S.9, pg19)

13. Procedure for transfer from one LSSA to another

13.1. The LSSA may:

- Transfer a service user who is under Guardianship to another LSSA or to a Private Guardian (Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, S.8 (1))

*Please note: There is **no requirement** on the “Receiving” LSSA to accept*

13.2. The AMHP must:

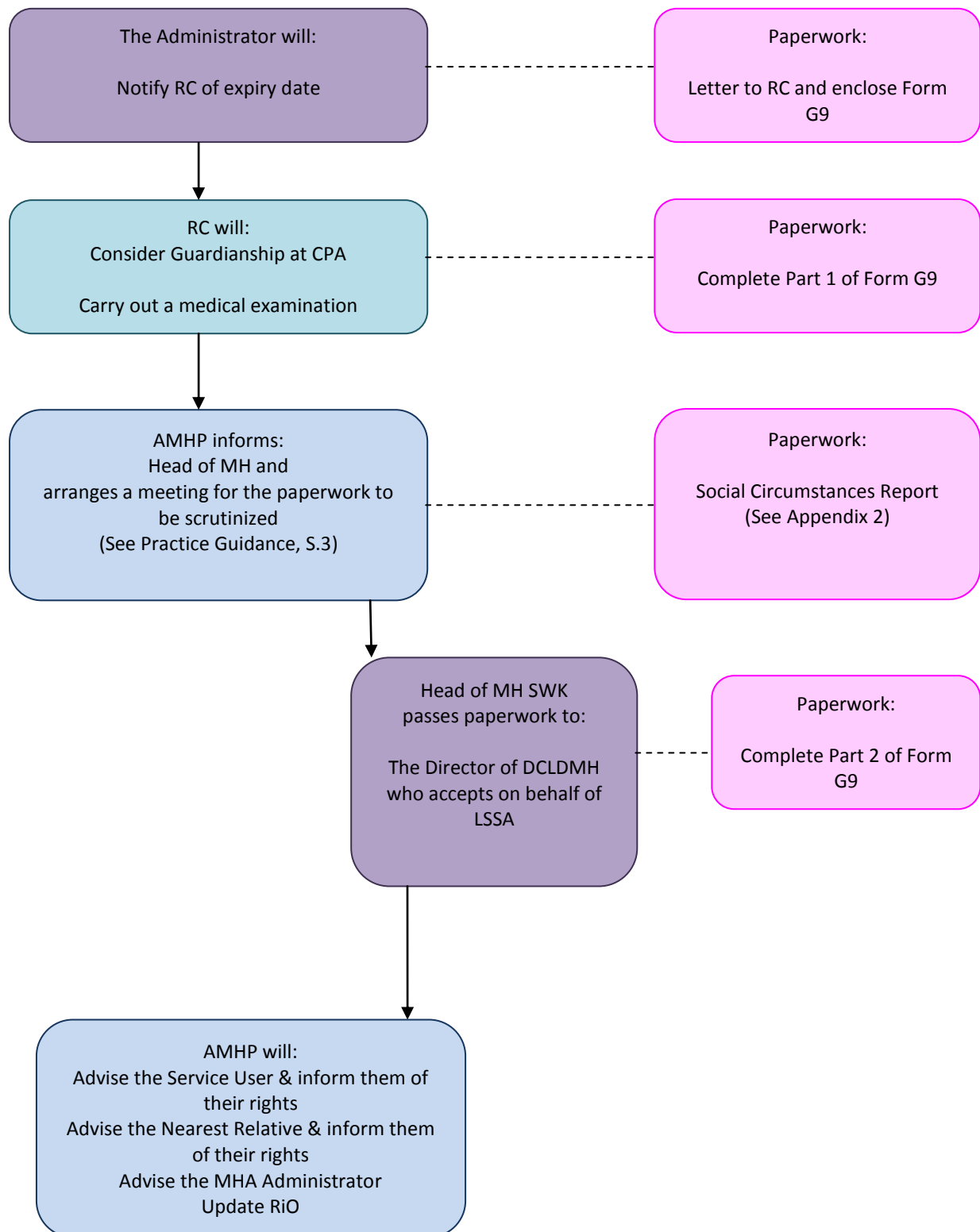
- Involve the service user and (where practicable) the NR in the decision-making process
- Inform the Receiving Officer for KCC at the earliest opportunity transfer is being considered
- Gain the **“agreement”** of the other LSSA or the **“willingness”** of the proposed new Private Guardian

13.3. The Receiving Officer will:

- Inform the Designated Signatory and make arrangements for them to complete Part 1 of the **Form G7** – <http://staffzone.kmpt.nhs.uk/amhp>

Please note: *Where the service user is being transferred from an English LSSA to a Welsh LSSA, English forms will be used. Likewise, where the service user is being transferred from a Welsh LSSA to an English LSSA, Welsh forms will be used.*

14. RENEWALS OF GUARDIANSHIP



14. Procedure for Renewing

14.1. Guardianship can be renewed after the initial six months, for a period of a further six months and thereafter, for periods of up to one year.

*Please note: It is the responsibility of **the RC** to renew the Guardianship*

14.2. The RC must:

- Take responsibility for recording the start of the Guardianship period and the next renewal timescale

*Please note: The RC should **not** require prompting to complete the renewal process by the Guardianship Administrator/AMHP*

14.3. Guardianship can be discharged “**at any time**” within the time period therefore, should be kept under review (MHA Reference Guide, 19.120; MHA, S.23 (2)(b)). It is best practice this occurs as soon as, the criteria justifying its renewal or extension is no longer met (CoP, 32.18) (Please see below Practice Guidance, S.16 pg 29)

*Please note: It is imperative the RC **does not** wait for Guardianship to expire or that it is allowed to simply lapse (CoP, 32.18).*

14.4. The RC should:

- Take steps to review the need for Guardianship within the last two months of the period

14.5. The AMHP will:

- At the point of **considering** making a renewal contact:

The Head of MH

who will act as the “*Receiving Officer*” on behalf of the LSSA and will nominate someone in their absence. S/he can be contacted via:

The Mental Health Professional Assurance Team (PAT),
Disabled Children, Adults Learning Disability and Mental Health Directorate
(DC/ALD/MH)

Fourth Floor, Invicta House, Sandling Road,
Maidstone, Kent, ME14 1XX

03000 417100

14.6. The AMHP/RC should:

- In part base their decision to make a renewal for Guardianship on a multi-disciplinary / multi-agency Care Programme Approach (CPA) planning/ review meeting (CoP, 34.8 & 30.20).

14.7. The AMHP should:

- Where possible (unless there is a good reason) see the service user jointly with the RC.

14.8. The AMHP will:

- Where possible secure the attendance of the person (e.g. a familiar person or advocate) who the service user wants to be present during the CPA

Please note: Consideration must be given at the earliest possible stage to involve an IMHA website www.kentadvocacy.org.uk or phone 0300 34 35 714

14.9. The AMHP should:

- Always give the service user the opportunity to talk to them alone (CoP, 14.53 & 14.55).

14.10. The AMHP must:

- Consult with the NR **before** completing the paperwork:
 - it is not reasonably practicable
 - there is not sufficient information to establish their identity or location
 - the NR's own health or mental incapacity prevents this
 - it would have a detrimental impact on the service user
 - (European Convention of Human Rights 1998 (ECHR): Article 8; MHA, S.11(4); CoP, 14.59 - 14.61).

Please note: The AMHP should consider all the circumstances of the case and the decision to **not** consult should not be taken lightly (CoP, 14.62)

14.11. The RC cannot:

- Proceed with the renewal for Guardianship if the NR objects (MHA,S.11(4)(a); CoP, 14.65).

Please note: Where this occurs the AMHP must consider whether to apply to the County Court for the NR's displacement (MHA, S.29(3)(b) or (c); CoP, 14.65 & 5.11 - 5.24). For further advice see the "**Policy and Guidance on the Nearest Relative**" <http://staffzone.kmpt.nhs.uk/amhp>

14.12. The AMHP should:

- Also consult:
 - where appropriate with the service user's carer, other relevant relatives or friends
 - where possible with other people who have been involved with the service user's care
 - an attorney or deputy appointed under the MCA who has authority to make decisions about the service user's personal welfare (CoP, S.14.66, S.14.68 - S.14.70).

Please note: the service user's **carer** may or may not be the NR and it is essential their needs are not only assessed but also, where relevant, support is provided to meet their needs (CoP, 4.42; Care Act 2014, C.10 & C.20).

14.13. The AMHP must:

- Seek the agreement of the doctor who will act as RC at the earliest opportunity particularly, when responsibility for the service user is changing from one clinician to another (CoP, 34.11).

Please note: There is a template letter for acceptance of RC responsibility (Appendix: 1)

14.14. The AMHP must:

- Ensure the Complex Needs Panel (CNP) has **already** given approval for the appropriateness of the residential placement and the service manager has **already** given approval for the funding. This is particularly important when Guardianship is being used to require the service user to reside there.

Please note: A service user under Guardianship may still be asked to fund or contribute to the funding of their placement except if they are eligible for S.117 After-care or Continuing Health Care. Alternatively, they may choose to “top-up” if subject to S.117.

14.15. The RC will:

- Complete **Part 1 Form G9**, <http://staffzone.kmpt.nhs.uk/amhp>

Please note: No application by the AMHP is needed

14.16. The RC will:

- Give reasons for their opinions stated in their recommendations.
- Correctly specify the **“date of expiry”**
 - If the Guardianship started on the 10.04.2014
 - The expiry date will be midnight on the 09.04.2015

Please note: It is not sufficient to simply record a diagnostic classification of a mental disorder but rather both the symptoms and the behaviour the service user is exhibiting must be provided (CoP, 14.75).

14.17. The AMHP will:

- Complete a **Social Circumstances Report** to support the renewal and for what this should include please see (**Guidance, S.2, page 10**) above (the template for this is attached as **Appendix: 2**).

14.18. The AMHP must:

- Send a draft copy of the Social Circumstances Report and the Care Plan to **the AMHP Quality Assurance Manager** prior to submitting it to the LSSA.

14.19. The AMHP will:

- Send the **Social Circumstances Report** to the Receiving Officer via email

Please note: The AMHP must provide a signed copy

14.20. The AMHP will:

- Complete the **Part 1 of the Internal Nomination Form (Template, Appendix: 3)**

14.21. The AMHP may:

- In the event of an application being **rejected** by the LSSA wish to seek legal advice regarding their **“independent role”** and application (please consult with the **“Policy on Accessing Legal Advice”**
<http://knet/directorate/SCHW-documents/Pages/SC-policies.aspx>

Please note: The LSSA is not under any obligation to accept

14.22. The date of renewal begins:

- The day after the date when it would otherwise have expired

15. Procedure following renewal

15.1. The AMHP will:

- Advise the service user
- Advise the service user of their right of legal representation and access to an IMHA in order to assist them to appeal (CoP, 26.15).
- Support the service user to access these advocacy services where necessary in particular, when they lack capacity (CoP, 26.15)
- Advise the NR and inform them of their rights in particular, their power to discharge (MHA, S.132)
- Up-date Rio in particular, the care plan and complete an MH1

Please note: *In cases where the service user lacks capacity the AMHP will make the referral to the IMHA service on their behalf*

15.2. The AMHP will:

- Follow the **Procedure for Monitoring** (see Practice Guidance S.9, pg 19) above

16. Procedure for discharge

16.1. The RC can:

- Discharge the service user from Guardianship, following a formal medical examination **“at any time”** within the time period therefore, should be kept under review (MHA, Reference Guide, 19.120; MHA, S. 23(2)(b)). It is best practice this occurs as soon as, the criteria justifying its renewal or extension is no longer met.

Please note: *It is imperative the RC **does not** wait for Guardianship to expire or that it is allowed to simply lapse (CoP, 32.18).*

16.2. The RC should:

- Consider the decision to discharge the service user from Guardianship ideally at a multi-disciplinary/ multi-agency CPA planning/ review meeting (CoP, 34:15).
- Inform the LSSA in writing as soon as practicable (**Template Letter, Appendix: 13**).

Please note: *Discharge takes effect immediately and is **not** dependent on the LSSA receiving the RC’s letter (MHA Reference Guide, 19.120).*

16.3. The NR can:

- Discharge the service user from Guardianship **“at any time”** (MHA, Reference Guide, 19.118; MHA, S.23(2)(b)) and does not need to give prior notice.

Please note: the RC does **not** have the power to bar this.

16.4. The NR should:

- Inform the LSSA in writing as soon as practicable (**Template Letter, Appendix: 12**).

Please note: Discharge will take effect from the date the LSSA is informed.

16.5. The NR can:

- Appeal to the Mental Health Review Tribunal (MHRT) for the discharge of a service user who is subject to Guardianship under MHA, S.37

Please note: The NR **cannot** in this case discharge them themselves

16.6. The AMHP should:

- Consider whether it is appropriate to apply to the court for the displacement of the NR if they have concerns the NR has exercised their power of discharge unreasonably (MHA, S.29) (please refer to **The Nearest Relative Policy** (<http://staffzone.kmpt.nhs.uk/amhp>))

16.7. The LSSA can:

- Discharge the service user from Guardianship via a sub-committee of at least three members (MHA, S.23 (4)). For KCC these will be of the Regulation Committee who will act on the recommendation of the Corporate Director (Social Care, Health and Wellbeing).

16.8. The Chair of the Guardianship Quality and Scrutiny Panel will:

- Provide all relevant information to the Corporate Director in order to assist with this process.

Please note: Discharge will take place with immediate effect. However, best practice will usually be for the LSSA to ensure the RC exercises their right of discharge.

16.9. The service user can:

- Appeal to the MHRT (see below, Practice Guidance, S.17, pg 30)

17. Procedure for Appeals to the MHRT

17.1. The AMHP should:

- Advise the service user of their right of appeal (CoP, 26.15)

Please note this must be for each period when the service user becomes subject to Guardianship and not just at the point of the initial acceptance or transfer.

17.2. The AMHP should:

- Advise the service user of their right of legal representation and access to an IMHA in order to assist them to appeal (CoP, 26.15).
- Support the service user to access these advocacy services where necessary (CoP, 26.15)

Please note: In cases where the service user lacks capacity the AMHP will make the referral to the IMHA service on their behalf

17.3. The AMHP will:

- Support the service user to inform the Tribunal Office of their wish to exercise their right where appropriate (**Application form, Appendix: 4**)
- Inform the Head of MH
- Interview the service user
- Consult with all those involved with the service user's care
- Consult with the NR
- Write a Social Circumstances Report (For guidance as to what this should include **see Practice Guidance, S.2, pg 10**) above.
- Send a draft copy of the Social Circumstances Report to **the AMHP Quality Assurance Manager** in the first instance who will audit the quality of it.

17.4. The AMHP will:

- Inform the Head of MH of the service user's wish to withdraw their appeal where appropriate
- Inform the Head of MH of the outcome of the MHRT
- Send copies of all the reports and paperwork to the Guardianship Administrator

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Appendix 1: Letter to LSSA by RC accepting responsibility to be RC

STRICTLY PRIVATE & CONFIDENTIAL

<<ADDRESS OF RC>>

<<DATE>

Penny Southern
Mental Health Professional Assurance
Team
4th Floor, Invicta House
Sandling Road
MAIDSTONE
ME14 1XX

Phone: 03000 417100
Ask for: Cheryl Fenton
Email: Cheryl.fenton@kent.gov.uk

Dear Ms Southern

I am writing to inform you that I am the named Responsible Clinician for:

<<NAME OF SERVICE USER>>

Should circumstances change I will notify you who I am transferring their care to.

I confirm my contact details are:

<<TELEPHONE NUMBER>>

<<EMAIL ADDRESS>>

Yours faithfully

CC **SERVICE USER**
AMHP

Appendix 2: Social Circumstances Report

Social Circumstances Report

Part A – Service User’s Details

| | |
|--------------|-----------------|
| Name: | Address: |
| | |

Part B - Ethnic Origin (please ✓ or X as appropriate)

| White | <input checked="" type="checkbox"/> | Mixed Race | <input checked="" type="checkbox"/> | Asian or Asian British | <input checked="" type="checkbox"/> |
|-------------------------------|-------------------------------------|---------------------------|-------------------------------------|-------------------------------|-------------------------------------|
| British | | White and Black Caribbean | | Indian | |
| Irish | | White and Black African | | Pakistan | |
| Other | | White and Asian | | Bangladeshi | |
| | | Other | | Other | |
| Black or Black British | <input checked="" type="checkbox"/> | Chinese | <input checked="" type="checkbox"/> | Other | <input checked="" type="checkbox"/> |
| Caribbean | | Chinese | | Other | |
| African | | | | Not Know | |
| Other | | | | | |

Part C Classifications (please delete as appropriate)

| | | |
|------------------------------|------------------------|----------------------------|
| Section: | 7 | 37 |
| Diagnosis: | Mental Disorder | Learning Disability |
| Language: | | |
| Interpreter Required: | Yes | No |
| Sex: | Male | Female |

Serving Kent, serving you

Part E Details of Professionals Involved

| | |
|--------------------------------------|---|
| Name of RC: | Address of RC: |
| Name of AMHP: | Address of AMHP: |
| Name of Care Coordinator: | Address of Care Coordinator: |
| Name of General Practitioner: | Address of General Practitioner: |

Part F Details of Others Involved (please delete as appropriate)

| | | |
|---|-------------------------|---------------------------|
| Is there a Nearest Relative? | Yes | No |
| Does the service user want them contacted? | Yes | No |
| Name of NR | Address of NR | Tel No/ Email: |
| Is there a Carer? | Yes | No |
| Does the service user want them contacted? | Yes | No |
| Name of Carer | Address of Carer | Tel No/ Email: |

Please make explicit reference to the **Guiding Principles of the Code of Practice** (COP: 1.2) when completing this report. All five sets of principles are of equal importance and should inform any decision under the MHA:

- 1.2 - 1.6 Least restrictive option and maximizing independence
- 1.7 - 1.12 Empowerment and involvement
- 1.13 - 1.14 Respect and dignity
- 1.15 - 1.17 Purpose and effectiveness
- 1.18 - 1.21 Efficiency and Equity

Sources of Information:

- Direct face-to-face meetings with service user, RC, NR, IMHA, Manager of Residential Home, etc
- Telephone conversations
- Significant reports, etc

Family/Social Background (Brief):

Past Psychiatric History (Brief):

- First contact with mental health services
- Admissions to hospital (please state if under the MHA)
- Date first placed under Guardianship
- Dates of previous renewals

Circumstances Leading to Current Application/Transfer/Renewal of Guardianship:

- Capacity of service user to decide where to live
- Reasons why solely using the MCA is **not** appropriate as the least restrictive option
- What the risks are
- What the predicted outcome(s) will be for the service user if Guardianship is **not** implemented

Care Plan:

- Please refer to MHA CoP, 34 for what this should include
- If the service user is being placed in residential care please state the date of when the Complex Need Panel approved this placement
- If DoLs is also being used please state the start date and the renewal date
- Please identify all the needs of the service user and how these are to be met
- Please identify if any parts of the care plan include **continual supervision and control**
- Please identify, which parts of the care plan require the power(s) of Guardianship to be used

| |
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View of Service User:

- Please state if they have the support of an IMHA
- Capacity of service user to understand Guardianship and its powers

| |
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| |
|--|

View of Nearest Relative:

- **Please state how NR was identified**
- *If certain information **should not** be shared with the service user it is helpful to use the same guiding principles provided by Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.*

| |
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Recommendation:

| |
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| | |
|----------------------------------|--|
| Signature: | |
| Print Name & Address: | |

| | |
|--------------|-------------------|
| Date: | -----/-----/----- |
|--------------|-------------------|

Please make explicit reference to the **Guiding Principles of the Code of Practice** (COP: 1.2) when completing this report. All five sets of principles are of equal importance and should inform any decision under the MHA:

- 1.2 - 1.6 Least restrictive option and maximizing independence**
- 1.7 - 1.12 Empowerment and involvement**
- 1.13 - 1.14 Respect and dignity**
- 1.15 - 1.17 Purpose and effectiveness**
- 1.18 - 1.21 Efficiency and Equity**

Sources of Information:

- Direct face-to-face meetings with service user, RC, NR, IMHA, Manager of Residential Home, etc
- Telephone conversations
- Significant reports, etc

Family/Social Background (Brief):

Past Psychiatric History (Brief):

- First contact with mental health services
- Admissions to hospital (please state if under the MHA)
- Date first placed under Guardianship
- Dates of previous renewals

Circumstances Leading to Current Application/Transfer/Renewal of Guardianship:

- Capacity of service user to decide where to live
- Reasons why solely using the MCA is **not** appropriate as the least restrictive option
- What the risks are
- What the predicted outcome(s) will be for the service user if Guardianship is **not** implemented

Care Plan:

- Please refer to MHA CoP, 34 for what this should include
- If the service user is being placed in residential care please state the date of when the Complex Need Panel approved this placement
- If DoLs is also being used please state the start date and the renewal date
- Please identify all the needs of the service user and how these are to be met
- Please identify if any parts of the care plan include **continual supervision and control**
- Please identify, which parts of the care plan require the power(s) of Guardianship to be used

| |
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| |
|--|

View of Service User:

- Please state if they have the support of an IMHA
- Capacity of service user to understand Guardianship and its powers

| |
|--|
| |
|--|

View of Nearest Relative:

- **Please state how NR was identified**
- *If certain information **should not** be shared with the service user it is helpful to use the same guiding principles provided by Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.*

| |
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|--|

Recommendation:

| |
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| |
|--|

Signature:

| |
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| |
|--|

| | |
|----------------------------------|-------------------|
| | |
| Print Name & Address: | |
| Date: | -----/-----/----- |

Appendix 3: Internal Nomination Form

Internal Nomination Form
on behalf of Kent County Council

PART 1:

I, Penny Southern nominate:

<<NAME OF MIXED ROLE AMHP>>

to discharge the duties of Guardian in the case of:

<<NAME SERVICE USER>>

This nomination shall continue until a new nominee is named in writing and transfer has successfully been completed.

Signature of Director

Disabled Children, Adults Learning Disability & Mental Health

Date of approval:

PART 2:

I, <<NAME OF MIXED ROLE AMHP>> confirm my contact details are:

Address:

Telephone:

Mobile:

Email Address:

Signature:

Date:



Serving Kent, serving you

Office stamp
(date received)

First-tier Tribunal Health, Education and Social Care Chamber (Mental Health)

Guardianship – Application to First-tier Tribunal (Mental Health) Mental Health Act 1983 (as amended) The Tribunal Procedure (First-tier Tribunal) (HESC) Rules 2008

| Please tick the relevant application type | |
|--|--|
| Application by or on behalf of a patient subject to a Guardianship Order | |
| Application made by the patient's Nearest Relative when Guardianship Order has been made by a criminal court pursuant to section 37 MHA 1983 | |
| | |

| Please complete all information requested in this part of the application form. | |
|---|--|
| <ul style="list-style-type: none"> • An application should contain all the information requested. • If you cannot provide the information required below, please give reasons. • The tribunal may return an incomplete application form. | |
| Patient's full name¹ and date of birth:¹ | |
| Date(s) of initial Guardianship Order and most recent renewal date: | |
| Address where patient resides under Guardianship Order. - Contact person there, - Telephone numbers: | |
| Local Social Services Authority, including: individual, professional to contact, full address, telephone number, and secure email address: | Cheryl Fenton, Head of Mental Health Mental Health Professional Assurance Team Kent County Council 4th Floor, Invicta House, County Hall, Sandling Road, Maidstone, Kent, ME14 1XX 03000 417100 Cheryl.fenton@kent.gcsx.gov.uk |

| | |
|---|--|
| Name and address of Guardian (if not the Local Social Services Authority): | |
|---|--|

¹ Parties must cooperate with the tribunal and this information is required to enable the tribunal to deal with the case effectively and to avoid delay. An incomplete application form may be returned.

| | |
|---|------------------------|
| Professionals responsible for the patient's care: please give full name, job title, address, telephone and secure email addresses. 1) <u>Responsible Clinician</u> 2) <u>Care Coordinator from Local Social Services Authority</u> 3) <u>Other</u> | 1. 2. 3. |
|---|------------------------|

| | |
|--|--|
| Nearest Relative details if known (Non-restricted cases only) | |
| Name: | |
| Address: | |
| Relationship to patient: | |
| Does the patient object to the Nearest Relative being informed about this case? | |
| Solicitor's details if known | |
| Name of solicitor | |
| Name & address of solicitor's firm: | |
| Telephone number: | |
| Secure email address: | |

| | |
|--|--|
| Unrepresented: *Delete as appropriate | <ul style="list-style-type: none"> ● I intend to appoint a solicitor myself* ● I would like a solicitor to be appointed on my behalf* ● I do not wish to appoint a solicitor as I am able to represent myself |
| Is an interpreter is required? If so, please enter the language and dialect required: | |
| Please tell us of any other special requirements: | |

Declaration (*Delete as appropriate)

This application is submitted by the patient or nearest relative.

Or

This application is submitted on behalf of the patient or nearest relative, who has personally authorised me to submit this application on their behalf.

| | | | |
|-------------------|--|-------------|--|
| Signature | | Date | |
| Print name | | | |

Completed forms should be sent by secure email to:

tsmhapplications@hmcts.gsi.gov.uk

If you have a CJSM account, please send to

tsmhapplications@hmcts.gsi.gov.uk.cjsm.net

Or send by DX to:

HM Courts & Tribunals Service
 First-tier Tribunal (Mental Health)
 DX: 743090 Leicester 35

Or send by first class post to:

HM Courts & Tribunals Service,
 First-tier Tribunal (Mental Health),
 PO Box 8793,
 5th Floor,
 Leicester
 LE1 8BN.

Please do **not** submit the form more than once.

Appendix 5: Easy Read Leaflet on Guardianship

<http://www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Guardianship.pdf>

Appendix 6: Easy Read Leaflet on IMHA

<http://www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-IMHA.pdf>

Appendix 7: Kent Advocacy Information



Phone Number: 0300 343 5714

Website: <http://www.kentadvocacy.org.uk/index.html>

Below are each one of the eight partners that together are Kent Advocacy



Appendix 8: IMHA and Informal Inpatient Referral



kent-advocacy-imha-
referral-form-may-16

Appendix 9: Easy Read Leaflet on NR

<http://www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Documents/easy-read/MH-CoP-Nearest-relative.pdf>

Absent Without Leave (AWOL)



What does this mean?

Your Guardian (Approved Mental Health Professional) can decide some things for you.

One thing they can decide is where you need to live so you can receive the right support.

But under Guardianship you are still free to come and go from the place you live

Guardianship has other rules, which can require you to go for treatment, work, training or education at agreed times and places.



Your care plan will say:




- what support you need
- how best to keep you safe
- how to protect other people.

It will also say when you take a short break from the place where you live. This is called **leave of absence**.



Your care plan will tell you when and how you can have these breaks

It might be to see your friends or family

| | |
|---|---|
| | <p>It might be to go somewhere in the community that your Guardian has decided</p> <p>If you stay out longer than what is agreed in your care plan this is called absent without leave or AWOL</p> |
|  | <p>What will happen when I go AWOL?</p> <p>The staff in the place where you live will contact your Guardian.</p> <p>If your Guardian knows where you are they may decide to bring you back</p> |
|  | <p>What will happen when I am back?</p> <p>Your Guardian will talk with you about why you stayed out longer</p> <p>It may be that your care plan needs changing.</p> <p>If it does you can have an advocate to help you with this</p> |
|  | <p>If you have any questions please ask your Guardian</p> |

Appendix 11: Authorisation to return form

**Internal Delegation Form
to return the service user
on behalf of Kent County Council**

PART 1:

I, Penny Southern confirm delegation of the power to return to:

<<NAME OF MIXED ROLE AMHP>>

This delegation shall continue until:

<<NAME SERVICE USER>>

has been successfully returned or until it is decided the exercise of this power is no longer needed.

**Signature of Director
Disabled Children, Adults Learning Disability & Mental Health**

Date of approval:

PART 2:

I, **<<NAME OF MIXED ROLE AMHP>>** confirm my contact details are:

Address:

Telephone:

Mobile:

Email Address:

Signature:

Date:



Serving Kent, serving you

<<ADDRESS OF NEAREST RELATIVE >>

<<DATE>>

STRICTLY PRIVATE & CONFIDENTIAL

**Mental Health Professional Assurance
Team**

4th Floor, Invicta House
Sandling Road
MAIDSTONE
ME14 1XX

Phone: 03000 417100
Ask for: Cheryl Fenton
Email: MHGuardianship@kent.gov.uk

Dear Penny Southern

Re <<NAME>> <<DOB>> Guardianship discharge

I am writing to inform you I have decided <<NAME OF SERVICE USER>> no longer needs to be subject to Guardianship.

I have therefore exercised my right as their Nearest Relative to discharge <<HIM/HER>> as laid down in Section 23 of the Mental Health Act 1983 (Amended 2007).

As this takes place with immediate effect, please amend your records to say this occurred on << DATE>>.

Yours faithfully

<<Name>>

Nearest Relative

<< Name>>, Service User
<< Name>>, Responsible Clinician
<< Name>>, AMHP

<<ADDRESS OF RC >>

<<DATE>>

STRICTLY PRIVATE & CONFIDENTIAL

**Mental Health Professional Assurance
Team**

4th Floor, Invicta House
Sandling Road
MAIDSTONE
ME14 1XX

Phone: 03000 417100
Ask for: Cheryl Fenton
Email: MHGuardianship@kent.gov.uk

Dear Penny Southern

Re <<NAME>> <<DOB>> Guardianship discharge

I am writing to inform you I have decided <<NAME OF SERVICE USER>> no longer needs to be subject to Guardianship.

I have therefore exercised my right as their Responsible Clinician to discharge <<HIM/HER>> as laid down in Section 23 of the Mental Health Act 1983 (Amended 2007).

As this takes place with immediate effect, please amend your records to say this occurred on << DATE>>.

Yours faithfully

Responsible Clinician

<< Name>>, Service User
<< Name>>, AMHP
<< Name>>, Nearest Relative