

MEETING:	REGULATORY COMMITTEE
DATE:	8 MAY 2012
TITLE OF REPORT:	DISCHARGE OF GUARDIANSHIP UNDER THE MENTAL HEALTH ACT 1983
REPORT BY:	Principal Lawyer

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To request that Regulatory Committee delegates the Council's function in relation to Discharge of Guardianship under the Mental Health Act 1983 to the Regulatory Sub-Committee.

Recommendation

THAT:

The Committee notes that it will carry out the Council's functions in relation to Discharge of Guardianship under the Mental Health Act 1983 and delegates this function to the Regulatory Sub Committee.

Key Points Summary

- A Local Social Services Authority (LSSA) has duties and powers in relation to Guardianship under the Mental Health Act 1983. The Council is the LSSA for Herefordshire
- By virtue of the Mental Health Act 1983 and the statutory Code of Practice the Council has a power to discharge a patient from Guardianship.
- The Council must consider whether to use its power of discharge whenever a renewal of Guardianship takes place.
- No arrangements are in place to enable the Council to carry out its duties in this regards. This Recommendation rectifies the position thereby enabling the Council to comply with its statutory duties.

Alternative Options

- 1 The statutory function must be carried out by the Council; a committee of the council or sub-

Further information on the subject of this report is available from
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committee of the Council. Alternative options would be for the Council to carry out the function or for a different committee or sub committee to be identified.

Reasons for Recommendations

- 2 The function falls within the remit of the Regulatory Committee as 'other miscellaneous regulatory functions not within the remit of any other Council body'. Given the sensitive nature of the statutory function it should be carried out by a small number of members to comply with the council's duty of confidentiality to the patients concerned. Delegating the function to the Sub-Committee of the Regulatory Committee would minimise the circulation of sensitive personal information.

Introduction and Background

- 3 Guardianship is a process prescribed by the Mental Health Act 1983 whereby a patient subject to the Act can be provided with care outside a hospital setting. The Guardian has certain specified powers including the right to decide where the patient must live. Guardianship involves a considerable curtailment of the rights of the patient. An application for Guardianship is made by an Approved Mental Health Professional and two doctors. There are strict statutory criteria. The application is made to the LSSA. If the LSSA accepts the application it becomes the Guardian. Guardianship lasts initially for 6 months. It can be renewed for a further period of 6 months and subsequently renewed for 12 month periods. A patient subject to Guardianship has a right of Appeal to the Mental Health Review Tribunal.
4. The LSSA has a power to discharge a patient from Guardianship at any time, but must consider the question whenever a renewal is proposed by the patient's clinician. Whereas other Guardianship functions can be delegated to officers, the function of discharge of Guardianship may not be delegated. The function must be carried out by the LSSA, or a committee or sub committee of the LSSA. In Herefordshire the LSSA is the Council. This proposal seeks to put in place a process for the council to carry out its duties in relation to discharge of guardianship. The subject matter of each case is highly sensitive and confidential. It follows that if the council is to comply with its duties towards patients the information should be restricted to the smallest number of members indicating a preference for a sub committee to carry out the function. It follows that the public should be excluded from deliberations. The members of the sub committee would need training on the relevant issues to carry out their role effectively. Guardianship has been used relatively infrequently in Herefordshire in recent times. At present one patient is subject to Guardianship.

Key Considerations

- 5 The proposals for the Council to deal with its responsibilities under the provisions of the Mental Health Act 1983 will regularise what needs to be done, provide greater clarity and introduce a more flexible and robust procedure for the way in which it will be dealt with.

Community Impact

- 6 The new arrangements will not have any community impact other than providing greater clarity about the decision making process.

Equality and Human Rights

- 7 The use of Guardianship under the Mental Health Act 1983 engages Articles 5 and 8 of the European Convention on Human Rights. The proposal ensures that the Council complies with its procedural statutory duties thereby promoting the Rights of the patients involved.

Financial Implications

- 8 There are no significant financial implications to the Council. Should the Council fail in its statutory duties however there could be the cost of litigation and damages to aggrieved parties.

Legal Implications

- 9 The proposal complies with the Council's duties under the Mental Health Act 1983

Risk Management

- 10 If the recommendation is adopted the Council will have in place a structure which complies with its statutory duties. There are no risks attached to this course of action.
- 11 If the recommendation is not adopted and no remedial steps are taken the council would knowingly be in breach of its duties under the Mental Health Act. Any future use of Guardianship would carry the risk of being declared unlawful subjecting the Council to considerable reputational damage and the potential for financial loss in the form of the cost of litigation and damages to aggrieved parties.
- 12 To avoid the consequences set out above the Council would have to make alternative arrangements for this function to be carried out by full Council; a Committee or a Sub Committee.

Consultees

- 13 None.

Appendices

- 14 None.

Background Papers

- 15 The Mental Health Act 1983 and the statutory Code of Practice.