

# Guardianship Mental Health Act 1983

## Section 7

CCH14 Jan 2014

This Factsheet is for people who have been received into Guardianship under the Mental Health Act 1983 because two doctors and an Approved Mental Health Professional (AMHP) believe this to be necessary for their own welfare, or for the protection of others.

### **What is Guardianship?**

This is a way of encouraging people living in the community to engage with services or to live in a particular place.

### **How is Guardianship arranged?**

Under Section 7 of the Mental Health Act, an AMHP can apply for someone over 16 to be received into Guardianship. The application is supported by recommendations from two doctors. At least one of the doctors must be approved under the Mental Health Act (most likely to be a psychiatrist), and if possible at least one of the doctors should already have previous knowledge of the person. Both doctors and the AMHP must agree that a Guardianship order is appropriate and necessary.

The Guardianship application is made to South Gloucestershire Council. If South Gloucestershire Council accepts receipt of the Guardianship, they can appoint a worker or any other person who is willing to act as the guardian, e.g a relative.

The guardian can require the person to live at a specified place, to attend at particular places or times for treatment, occupation, education or training, and to allow a doctor, AMHP or other specified person to enter where he or she is living.

### **How long does Guardianship last?**

Initially, the Guardianship will last for six months, but may be renewed for a further six months. Any further renewals will be for 12 months.

A Guardianship will only remain in force while it is considered to be appropriate and necessary.

### **Why do people need a Guardian?**

As a result of someone's mental health needs, the people involved in the person's care consider that he or she needs a guardian to help them live in the community.

### **The Powers of a Guardian**

Section 8 of the Mental Health Act 1983 gives the Guardian the following powers:

- to require the person to live at an address the Guardian thinks is best for them
- to require the person to provide access to people named by the Guardian, such as a doctor, nurse or social worker
- to require the person to attend any place the Guardian may specify for medical treatment, occupation, education or training. The person may be required to attend, but no treatment may be given without the person's consent
- if the person is assessed as lacking mental capacity to consent to treatment, it may be given to them under the Mental Capacity Act 2005, if it is determined as being in their best interests.

### **Appeals**

If the person wants to stop being under Guardianship, they should discuss this with their guardian, doctor or social worker. The person under Guardianship or their nearest relative can also write to South Gloucestershire Council to ask them to look into the case.

People can also appeal against Guardianship to a Mental Health Review Tribunal, which has the power to discharge the person from Guardianship. If the responsible clinician (RC, the person in charge of the person's mental health care) renews the Guardianship for a further six months, it is possible to apply to the Tribunal again. After that, the person can apply once every year that they are still under Guardianship.

The Local Authority has a legal duty under the Mental Health Act to ensure availability of an Independent Mental Health Advocate (IMHA) for people who are subject to Guardianship. The IMHA is not meant to replace existing advocacy, legal advice or support, but will work alongside them. People who are subject to Guardianship will be given information on how to contact the IMHA service.

## **What happens at a Mental Health Review tribunal?**

The Tribunal is independent of South Gloucestershire Council. The Tribunal members will come and meet with the person and listen to their views and to those of their representative (if there is one). The Tribunal doctor will also come and see the person before the Tribunal hearing. They will speak to the person's doctor, social worker and read reports about the person before deciding if they are well enough to be discharged from Guardianship. The Tribunal will give a written decision within 7 days of the date of the hearing. Patients are entitled to free legal advice and representation in relation to any appeal.

## **Treatment**

The person's doctor will tell them about any treatment he or she thinks are needed while the person is subject to Guardianship. The person cannot be given any treatment without consent while under Guardianship.

If the person is assessed as lacking Mental Capacity to consent to treatment, it may be given to the person under the Mental Capacity Act 2005, if it is determined as being in their best interests.

## **Where to go for more information**

Please direct any enquiries to your Social Worker in the first instance. You can also contact Customer Services on 01454 868007 and ask to speak to the duty AMHP.

## **Independent Mental Health Advocates**

Any person subject to a Guardianship Order under the Mental Health Act is entitled to support from an Independent Mental Health Advocate (IMHA). An IMHA works alongside the person under guardianship to help them understand their rights, to provide information and support for people to get their views across. An IMHA is independent of any person who is professionally concerned with the patient's care or medical treatment. People can refer themselves or be referred by someone else.

**Phone:** 0117 965 4444

**Fax:** 0117 965 0200

**Email:** [imha@thecareforum.org.uk](mailto:imha@thecareforum.org.uk)

**Web:** [www.thecareforum.org](http://www.thecareforum.org)

**Write to:** The Independent Mental Health Advocacy Service, The Care Forum, The Vassall Centre, Gill Avenue, Fishponds, Bristol BS16 2QQ.

## **The Mental Health Advocacy Project**

The Mental Health Advocacy Project provides free mental health support for people aged 18-65 years who use mental health services in South Gloucestershire. The Project supports people to look at different options and possible outcomes.

### **For more information:**

**Phone:** 0117 958 9331

**Fax:** 0117 965 0200

**Email:** [sgmha@thecareforum.org.uk](mailto:sgmha@thecareforum.org.uk)

**Web:** [www.thecareforum.org](http://www.thecareforum.org)

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