 

**LINCOLNSHIRE COUNTY COUNCIL &**

**LINCOLNSHIRE PARTNERSHIP NHS FOUNDATION TRUST**

**Guardianship: Policy, procedures and guidance under**

**Section 7 of the Mental Health Act 1983**

**Document Control**

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# Policy Statement.

1.1 This policy sets out Lincolnshire County Council's (LCC's) duties as the Responsible Authority for the provision of Guardianship under the Mental Health Act 1983 (the Act), alongside arrangements with Lincolnshire Partnership Foundation NHS Foundation Trust (LPFT) for delivering these functions as its strategic partner in the provision of social care support to working age adults experiencing mental ill health.

1.2 This policy fulfils the requirements of The Mental Health Act Code of Practice Chapter 30.16 – *Responsibilities of Local Authorities.* (See appendix 1)

# Purpose of this document

2.1 This document aims:

* To promote a clear and consistent approach to Guardianship across Lincolnshire County Council and Lincolnshire Partnership Foundation Trust.
* To outline roles and responsibilities for organisations and individuals in using Guardianship.
* To provide practice guidance to Approved Mental Health Professionals (AMHPs), case coordinating practitioners and panels when considering Guardianship.

# Legislation / Policies / Documents.

3.1 The document should be read in conjunction with:

# The Mental Health Act 1983.

* The Mental Health Act Code of Practice (2015), specifically Chapter 30: *Guardianship* and Chapter 31: *Guardianship, Leave of absence or CTO?*

# Reference Guide to the Mental Health Act 1983 (2015)

* Mental Health (Hospital, Guardianship and Treatment) Regulations 2008.

# The Human Rights Act 1998

# Mental Capacity Act 2005

# Care Act 2014

* Lincolnshire Partnership Foundation Trust – Mental Health Act Procedures

# Legal context and purpose of Guardianship

4.1 The purpose of guardianship is to enable patients to receive care outside hospital where it cannot be provided without the use of compulsory powers. Such care may, or may not, include specialist medical treatment for mental disorder. (Code of Practice 30.2)

4.2 A guardian may be a local authority or someone else approved by a local authority (a ‘private guardian’). Guardians have three specific powers:

* they have the exclusive right to decide where a patient should live, taking precedence even over an attorney or deputy appointed under the Mental Capacity Act 2005 (MCA). The Court of Protection also lacks jurisdiction to determine a place of residence of a patient whilst that patient is subject to guardianship and there is a residence requirement in effect
* they can require the patient to attend for treatment, work, training or education at specific times and places (but they cannot use force to take the patient there), and
* they can demand that a doctor, AMHP or another relevant person has access to the patient at the place where the patient lives. (Code of Practice 30.3)

4.4 Guardianship therefore provides an authoritative framework for working with a patient, with a minimum of constraint, to achieve as independent a life as possible within the community. Where it is used, it should be part of the patient’s overall care plan. (Code of Practice 30.4)

4.5 Guardianship must not be used to impose restrictions that amount to a deprivation of liberty. Where the care plan however may amount to a deprivation of liberty, guardianship does not prevent the deprivation of the person's liberty under the MCA by means of DOL authorisation or a Court of Protection Order so long as it does not conflict with the guardian's decision as to where the patient should live. ( Code of Practice 30.34)

* 1. Further detail is available in the Code of Practice (Chapter 30)

**5.0 The Grounds for Guardianship (Section 7 of the Act)**

5.1 In both civil and criminal circumstances, a patient may be received into Guardianship if:

* They are 16 years of age or older;
* They are suffering from a ‘mental disorder’ as defined in section 1 of the Act.
* The mental disorder is of a nature and degree which warrants reception into Guardianship, and it is in the interests of the patient's welfare or for the protection of others.

**6.0 Responsibilities, accountabilities and duties**

6.1 This policy is relevant for all AMHPs; Responsible Clinicians, who may be required to assess an individual under Section 7 of the Act. It also applies to qualified and registered staff of LCC & LPFT who may be required to act as a Guardian on behalf of the Responsible Authority or fulfil the Responsible Authority’s duties towards a private Guardian; and staff who could be required to consider applications for guardianship and delivery of services related to guardianship, including Mental Health Act administrators who process the documentation.

6.2 LCC will:

* Have oversight of all Guardianship activity in Lincolnshire monitored through the Section 75 Operational Board Meeting.
* Ensure through its commissioning arrangements the availability of Approved Mental Health Professionals to support Guardianship activity.
* Be responsible for receiving, scrutinising and accepting or refusing applications.
* Commission administrative functions in support of all Guardianship through Lincolnshire Partnership Foundation Trust.
* Hold a Guardianship panel to consider all Guardianship requests.
* Identify an operational manager to act as Guardianship Manager responsible for oversight of each Guardianship case managed by LCC Adult Care teams.
* Ensure allocation of a Care Coordinator (key worker) for cases managed by LCC Adult Care teams.
* Ensure the availability of guidance and training for staff working with people where Guardianship may be considered as part of care and support arrangements.

6.3 Lincolnshire Partnership Foundation NHS Trust (LPFT) will:

* Administer all Guardianship applications across Lincolnshire for all customer and age groups through its Mental Health Act Administration Team.
* Coordinate AMHP activity in line with the Section 75 Agreement.
* Contribute expertise to scrutiny and panel processes.
* Provide Responsible Clinicians to support the Guardianship Procedure.
* Identify an operational manager to act as Guardianship Manager responsible for oversight of each Guardianship case managed by LPFT social care teams.
* Ensure the allocation of a Care Coordinator for cases managed by LPFT social care teams.

6.4 LPFT Mental Health Act Administration Team will:

* Act as Guardianship administrator for all Guardianship cases jointly managed by LCC and LPFT.
* Administer Guardianship applications as set out in LCC's Guardianship Procedures.
* Securely store the original Guardianship documentation in a central location, providing access to the appropriate individuals when required, for example at the point of renewal.
* Ensure that a Guardianship renewal reminder system is maintained.

6.5 Approved Mental Health Professionals will:

* Undertake assessments and produce reports in line with the procedures set out in this document and with reference to the Act and its Code of practice.
* Assess the suitability of any proposed private Guardians.
* Ensure they make themselves aware of this policy and attend appropriate training.
	1. Guardianship Manager.

6.6.1 In LCC the Guardianship Manager will be the Head of Service for the relevant operational team responsible for the care coordination.

* + 1. In LPFT the Guardianship Manager will be LPFT Section 75 Service Manager.

6.6.3 The Guardianship Manager will:

* Have oversight and initial scrutiny of all cases being considered for Guardianship (See Appendix 4)
* Ensure all statutory procedures are followed including the arrangements for regular review and discharge of Guardianship as soon as it is no longer required.
* Sit on the Guardianship panel.

6.7 Responsible Clinicians will:

* Review in person anyone subject to Guardianship at least once per year.

6.8 Care Coordinators, Social Workers, and Social Care Assessors will:

* Act as Guardianship coordinator working closely with the Guardianship Administrator and Guardianship Manager.
* Ensure that Guardianship is considered in line with this policy, LPFT procedures and with reference to the Code of Practice when assessing and reviewing care and support arrangements.
* Request assessment under the Act where Guardianship is being considered; and contribute to this process.
* Prepare plans and reports for Guardianship panels.
* Attend Guardianship panels and reviews as required.
* Exercise through delegated authority the powers of LCC as Guardian.
* Monitor progress, review the care plan and service delivery, and arrange for the patient to be visited at intervals not exceeding 3 months.
* Ensure the Guardianship Manager is informed of any changes in the care plan or of any admission to hospital.
* Maintain detailed records relating to the patient.

# Application for Guardianship

* 1. An application for Guardianship can be started by one of four sources:
* By an AMHP, under Section 7 of the Act using **Form G2**, if there are two medical recommendations **(one** **Form G3 or two Form G4**).
* By the Nearest Relative, under Section 7 of the Act using **Form G1**, if there are two medical recommendations **(one** **Form G3 or two Form G4**).
* Transfer from hospital to Guardianship using **Form G6**. The AMHP would normally be involved in multi-disciplinary discussions or review of any patient detained in hospital under Part 2 of the Act.
* By Court Order, under Section 37 (See 12.3), for any offence, except murder, where the offender could have been given a custodial sentence. Before the Court makes the order they will need to be satisfied that LCC is willing to receive the offender into Guardianship. Referrals may be received from judges, magistrates, court clerks, and psychiatrists.
	1. With the exception of Section 37 cases, the AMHP alone has the power to decide whether or not to proceed with a Guardianship application and whether to propose the local authority or a private person as Guardian. However, where reasonably practicable, consultation with the Nearest Relative is obligatory to ensure there is no objection to the application.
	2. Where the Nearest Relative objects, the application may not be made. The AMHP will, however, need to consider whether any application could or should be made to the County Court under Section 29 of the Act for the appointment by the court of an acting Nearest Relative.
	3. The application must state the patient's age or, if the patient's exact age is not known, that the applicant believes the patient to be at least 16 years old.
	4. The application must also state the name of the proposed Guardian and, when this is a private Guardian, be signed by that person to confirm their willingness to act as Guardian.
	5. Where the patient has been examined by two separate medical practitioners, there must be no more than five days between the examinations. At least one medical recommendation must be provided by a doctor who is previously acquainted with the patient, preferably a doctor who has personally treated the patient. The medical recommendations must be signed on or before the day the application is signed.
	6. The AMHP who is submitting the application must have personally seen the patient within the previous 14 days of the application being made.
	7. The AMHP should send the application to the Guardianship Manager who, on receipt of the documents, should complete the Guardianship application checklist **(Appendix 4)** and ensure there are no missing documents or errors.

7.9 The Guardianship Manager will forward the application (including medical recommendations, reports and care plans) to the Guardianship Panel Chair and arrange a date for the Guardianship Panel. The documents should be submitted 5 working days prior to the panel date.

7.10 LCC must receive the application within 14 days of the second medical recommendation.

# Assessment and care planning

# The decision to use Guardianship should be taken having considered the 'guiding principles' and whether there is another less restrictive way of achieving the objectives without the use of Guardianship.

* 1. Guardianship is most likely to be appropriate where:
* the patient is thought to be likely to respond well to the authority and attention of a Guardian and so be more willing to comply with necessary treatment and care for their mental disorder, or
* where there is a particular need for someone to have the authority to decide where the patient should live or to insist that doctors, AMHPs or other people be given access to the patient. (Code of Practice 30.9)
	1. The following assessment procedure will therefore be implemented before making an application for Guardianship:
* Where it is agreed Guardianship may be appropriate, the AMHP will discuss the possibility with the patient, and also with the registered medical practitioners, Nearest Relative and other appropriate professionals.
* During these discussions, and following receipt of the required medical recommendations, the AMHP will determine if grounds for Guardianship have been satisfied and if the powers granted by Guardianship are necessary to achieve any part of a comprehensive care plan.
* Once the AMHP has made detailed investigations, they should again discuss the proposed care plan with and ascertain the views of the patient and the Nearest Relative.
	1. All practical steps must be taken to ensure the patient understands the help that is available to them from an [Independent Mental Health Advocate](#Independent_Mental_Health_Advocacy) (IMHA) and how they can obtain that help. AMHPs should also consider requesting an IMHA to visit a qualifying patient if they think the patient might benefit but is unable or unlikely to request an IMHA’s help themself. The patient must receive both orally and in writing information about their right to have access to an IMHA.
	2. The AMHP must carry out a full written assessment of any private Guardian’s suitability and ability to meet the patient's needs; a copy of which should be provided alongside the application papers for Guardianship.
	3. When considering who the Guardian should be, it is important to note that a positive relationship is essential for Guardianship to be effective.
	4. The AMHP needs to ensure the proposed Guardian, including any private Guardian:
* can appreciate the needs and individuality of the patient;
* will promote the patient's physical and mental health;
* will provide for their occupation, training, employment, recreation and general welfare in a suitable way;
* will be prepared to advocate on behalf of the patient with the agencies whose services are needed to carry out the care plan; and
* is capable of carrying out their responsibilities, including the appointment of a nominated medical attendant.
	1. An application for Guardianship should be accompanied by a comprehensive care plan established on the basis of multi-disciplinary discussions in accordance with the care programme approach (or its equivalent). (Code of Practice 30.20)
	2. **The care plan should detail:**
* The name and contact details of the patient, proposed Guardian, and Care Coordinator.
* The views of the patient and significant others;
* The patient's background and history, including present circumstances and nature of the mental disorder;
* Detail of the patient's assessed needs, the services needed to meet those needs and who will provide them.
* suitable accommodation.
* the nature and frequency of planned professional involvement;
* Safeguarding and risk factors, and how these will be minimised to support independence;
* If Guardianship is a Section 37 order, the grounds on which the order is made;
* The specific powers and requirements of the Guardianship.
* the date of the first review;
* Section 117 arrangements where applicable.

# Duties and powers of the Guardian

## Duties of private and local authority Guardians:

## to ensure that the need to continue Guardianship is reviewed in the last two months of each period of Guardianship;

* to ensure access to the patient is granted, when required, to the responsible clinician or registered medical practitioner, the AMHP, any legal representative, any advocate, or anyone else as appropriate.

## Duties specific to the private Guardian:

* to appoint a registered medical practitioner to act as the nominated medical attendant of the patient, and to arrange for them to examine the patient during the last two months of each period of Guardianship;
* to notify the responsible local social services authority of the name and address of the nominated medical attendant;
* to comply with such directions as LCC may give, and to furnish LCC with all reports or other information regarding the patient as may be required;
* on the reception of the patient into Guardianship, to notify LCC of the private Guardian’s address and the address of the patient, and to notify LCC of any permanent change of either address, before or not later than 7 days after the change takes place, except where the change of address is outside of the county boundary;
* on any permanent change of the private Guardian’s address outside the authority of LCC, to notify LCC that there has been a permanent change of address outside of the county boundary, to notify the new local authority of the address, the address of the patient, and the name and address of the nominated medical attendant. The new local authority becomes the responsible authority;
* in the event of the death of the patient, the termination of the Guardianship by discharge, transfer or otherwise, to notify the responsible local social services authority as soon as possible;
* In the event of the resignation of the private Guardian, the private Guardian should send written notification to LCC, who should take up the role of Guardian. Where private Guardians are negligent, LCC may transfer Guardianship to the authority on the application of an AMHP.
* It should be noted that when considering whether to accept a Guardianship application the responsible local authority will be the authority where the guardian resides and not the individual who is being considered for Guardianship

**9.3 Powers.**

**9.3.1 A guardian has the power to:**

* decide where the patient should live. This decision of the guardian takes precedence over an attorney or deputy appointed under the Mental Capacity Act 2005.
* take the patient for the first time to the place where they are required to live, if the patient does not (or cannot) go there without assistance.
* take into legal custody and return the patient to the place where they are required to live, if they leave the address without the agreement of the guardian;
* require the patient to attend specified places at specified times for medical treatment, occupation, education or training but cannot use force to take them there.
* require the patient to be seen at the place where they are living by a doctor, AMHP or other relevant person specified by the guardian

# The Guardianship Panel

10.1 The core panel will comprise a minimum of three of the following:

* Head of Service or nominated deputy (LCC) – \* Panel Chair
* LPFT Section 75 Service Manager / Guardianship Manager or nominated deputy (LPFT)
* Guardianship Manager or nominated deputy (LCC)
* AMHP (not the applicant)

10.2 In addition to the core decision making members, it may be helpful to invite others to attend, including but not limited to:

* the patient if appropriate, and / or their representative.
* the AMHP (applicant).
* Care Coordinator / Social Worker.
* Consultant Psychiatrist / Responsible Clinician.
* Nearest Relative or other relative or carer.
* proposed private Guardian.
* representatives from care providers.
* LCC Legal Services.

10.3 The panel will:

* Have responsibility to receive, scrutinise, accept or refuse each Guardianship application, renewal and decision on discharging on behalf of the Local Social Services Authority
* Ensure Guardianship is reviewed and discharge patients from Guardianship as soon as it is no longer required.
* ensure that the Local Social Services Authority statutory visiting obligation to those patients under Guardianship are fulfilled as per the Mental Health Regulations 2008.
* monitor the Governance of receiving, scrutinising, accepting or refusing applications for Guardianship.
	1. The panel is only authorised to accept or reject Guardianship status. However, the panel will need to satisfy itself that general policies and procedures are adhered to and are in accordance with normal care planning processes and funding arrangements. The panel checklist should be completed (**Appendix 5).**

10.5 New documents must be provided where the application and recommendations are fundamentally invalidated. Less serious errors may be rectified by the original author and returned by the applicant within 14 days. LCC must give written consent to the amendment, which can take of the form of an endorsement on the document itself.

10.6 There is no time limit within which an application must be accepted; although any significant delay in convening a panel may constitute a breach of the Human Rights Act 1998.

* 1. Once Guardianship has been authorised, the panel chair will complete the record of acceptance of Guardianship application using Form G5 and Guardianship begins on the date this form is signed.
	2. If the patient is accepted into Guardianship, the Guardianship Manager will complete the record of Guardianship form (**Appendix 6)**, will ensure the necessary details are recorded to the patient's case notes and legal status, and will notify the relevant Lead Practitioner / Care Coordinator.
	3. The Guardianship Manager will, with support of the Mental Health Act Administration Team, prepare the [standard letters](#_Appendix_2_–) for the patient and the Nearest Relative and ensure these are distributed accordingly.
	4. The letters should:
* advise that Guardianship has been accepted and include the name of Guardian;
* advise of the duration and specific requirements of Guardianship, and the legal powers vested in the Guardian;
* advise of the patient's and Nearest Relative's legal rights, including the right to free legal representation and to appeal to the Tribunal;
* advise of the patient's right to access an IMHA.

10.11 All applications and documents must be kept on the patient’s record, including copies of the standard letters.

* 1. The Care Coordinator will inform the patient, their Nearest Relative, the recommending medical practitioners and the proposed private Guardian of the panel's decision.

# Transfer in to Guardianship

11.1 LCC must ensure the Nearest Relative and the patient are aware of transfers before or as soon as possible after the transfer.

* 1. No transfer into Guardianship will be agreed to until a Care Coordinator has been allocated and satisfactory arrangements have been made for the patient's community care.

## Transfer from Court into Guardianship (Section 37 of the Act)

## The Act empowers Courts to make Guardianship orders for certain categories of offender on the evidence of two registered medical practitioners and if LCC agrees to accept the order.

* + 1. Where there is consideration of such use of a Guardianship Order, the following standard procedure should be observed.
		- The defence is asked to produce to the court a letter from the authority, certifying willingness to receive the offender into guardianship; or
		- where such a letter is not produced, but where the court is minded to make a Guardianship Order, the court exercises its power under section 39(A) of the Act to request the local authority to inform the court whether it is willing to receive the offender into guardianship.
		1. The Guardianship Manager should be advised as soon LCC becomes aware that the Court is considering Guardianship, so the case, including any Court-prepared psychiatric assessment report, can be considered by the Guardianship Manager, relevant Principal Practitioner and AMHP.
		2. LCC must inform the Court if they are willing to accept the Guardianship order and to explain how the powers could be expected to be used. The AMHP will relay the response at the Court hearing.
		3. The same considerations apply to the use of Guardianship under section 37 as apply to Guardianship under section 7. If none of the powers of Guardianship are required, the proposed Guardianship under section 37 will not be accepted.

## Transfers from hospital into Guardianship (Section 19 of the Act)

* + 1. A patient detained in hospital under Section 2 or Section 3 of the Act can be transferred into Guardianship if LCC agrees to the transfer. However, a transfer from Section 3 of the Act into Guardianship with less than 2 months to run requires a formal assessment and new application for Guardianship.
		2. The AMHP should assess the patient, including interviewing in a suitable manner and consultation with the Nearest Relative. The hospital manager should complete Part 1 of Form G6 and forward it, along with the social circumstances report, to the Guardianship Manager.
		3. Guardianship is treated as if it commenced on the date of the patient's original detention in hospital under Section 2 or Section 3, and it expires on the date upon which the original detention would have expired. This sometimes gives rise to anomalies, e.g. if the first period of Guardianship lasts longer than 6 months.
		4. The renewal of a Guardianship is conducted in the same way as all other Guardianship renewals.

## Transfer from Guardianship to hospital.

## A person subject to Guardianship can be admitted to hospital informally or compulsorily either as an emergency admission or for assessment. In both cases, Guardianship remains in force.

* + 1. Where a person needs to be admitted for treatment under section 3, the AMHP will ensure a report on why transfer is necessary is forwarded to the Guardianship Manager. The Guardianship Manager should then complete **Form G8**.
		2. Admission to hospital must happen within 14 days of the second medical recommendation, at which point the Guardianship ceases. The section 3 runs from the date when the original Guardianship application was accepted.

## Transfer between Guardians

* + 1. The authority for transfer is given by the current Guardian and accepted by the proposed Guardian, using Form G7. The local authority must agree to the transfer between Guardians and must specify the date on which the transfer is to take place.
		2. If the private Guardian is incapacitated, LCC may act temporarily on behalf of the private Guardian, but may not go against any wishes or instructions of the permanent Guardian. LCC must inform the patient’s Nearest Relative, unless the patient has requested otherwise.

## Transfer between local social services authorities – ordinary residence.

## The responsible authorities for determining ordinary residence are those where the patient is resident or where the patient was resident prior to hospital admission.

* + 1. The receiving local authority must be in agreement of the transfer. Regulations 7 and 8 of the Mental Health Regulations 2008 sets out the requirements that must be considered.
		2. The Guardianship Manager should complete **Form G7**, and arrange for it, along with copies of all relevant paperwork from the original Guardianship application and any subsequent renewals, to be sent to the appropriate contact in the new local authority.
		3. The receiving local authority will approve the transfer date and is responsible for informing the Nearest Relative in writing.

# Absent without leave (AWOL).

* 1. A patient is considered to be AWOL when they are absent without permission from the place where they are required to live by their Guardian. They can be taken into custody by any member of LCC staff, the Guardian, any police officer, or by any person authorised in writing by LCC (e.g. LPFT staff), and returned by force to the place they reside, if necessary.
	2. If the patient is in private premises and entry is barred or where access is denied to a patient who is AWOL, a warrant can be obtained under Section 135(2) of the Act.
	3. The Guardian, the patient's Care Coordinator, the patient's identified carers, and the accommodation manager or householder should be notified immediately if the patient is AWOL. Additionally, the local Emergency Duty Team (LCC) and Crisis Resolution Home Treatment Team (LPFT) should be notified in view of the patient coming to their attention.
	4. Where a patient continues to be AWOL from their residence, consideration should be given to amending the care plan or whether it is appropriate to continue the Guardianship.

## Police involvement

* + 1. The police should always be informed immediately if:
* a patient is missing who is considered to be particularly vulnerable, dangerous, or is subject to restrictions under Part III of the Act; or
* the police have been informed about a missing patient who has since been found or has returned.
	+ 1. The assistance of the police should also be requested if the reasons and likely whereabouts are unknown.
		2. There may also be other cases where, although the help of the police is not needed, a patient’s history makes it desirable to inform the police that they are AWOL in the area.

## When the patient has returned within 28 days

## If the patient has returned within 28 days and the current authority Guardianship has not expired, that authority remains in place until its expiry date.

* + 1. If the patient has returned within 28 days and the Guardianship has expired or has less than 7 days to run, it can be extended by up to 7 days beginning with the day the patient returns. During these 7 days the patient must be assessed with a view to either renewing or discharging the Guardianship. The renewal will take effect from the date the original period ended.

## When the patient has returned after 28 Days

## If the patient is returned after 28 days, the responsible clinician must examine the patient within 7 days of return to determine whether Guardianship is still appropriate.

* + 1. Where the authority for Guardianship has expired or has less than 7 days to run, it can be extended by up to seven days beginning with the day the patient returns.
		2. If continued Guardianship is thought necessary, the responsible clinician or nominated medical attendant must submit a report to LCC, using **Form G10** for expired Guardianship or **Form G9** where there is less than 7 days to run. Once submitted the report will reinstate the original authority for Guardianship. The authority for continued Guardianship of the patient will not take effect until the forms are received by LCC.
		3. Where **Form G9** is submitted, the renewal should follow normal procedure, as detailed in [renewal](#Discharge_and_renewal) and discharge (below). Where **Form G10** is submitted, it will automatically renew the authority for Guardianship and will take effect from the expiry date of the original section. If no report is submitted the patient's liability to Guardianship will end.

# Renewal and discharge

* 1. Guardianship initially lasts for six months. It may then be renewed for a further six months, and then for a year at a time.
	2. If a patient consistently resists the Guardianship, LCC should first consider if it is more appropriate to change the person who acts as Guardian, and then consider discharging the Guardianship.

## Renewal

* + 1. Guardianship should only be renewed where the need for this can be clearly demonstrated and is based on agreement from all involved professionals, the patient and the Nearest Relative.
		2. Within two months of Guardianship ceasing to have effect, the Guardian must arrange for the Responsible Clinician or nominated medical attendant to examine the patient and for a case review to assess whether grounds for Guardianship still exist. Specific intervention of the AMHP is not required, however all professionals involved in the patient's care, the patient, and the Nearest Relative should be present at the review.
		3. If grounds for renewal are met, the Responsible Clinician or nominated medical attendant should complete **Form G9** (part 1); and the Guardian should forward this to the Guardianship Manager.
		4. The Guardianship Manager will then forward the renewal request to the Guardianship Panel Chair and arrange a date for the Guardianship Panel.
		5. The panel will review the renewal request along with a report from the Care Coordinator which should include:
* the original reasons and requirements of the application, and how the requirements have been implemented over the last period of Guardianship;
* the effect on the patient, their views, the views of Nearest Relative, and the views of relevant others;
* the patient’s current circumstances, including the patient's mental health, assessment of needs, and risk assessments;
* the proposed conditions for renewal and which of the three powers are needed, and a comprehensive care plan for the next period of Guardianship;
* the date on which the patient was informed of the medical recommendation for renewal.
	+ 1. If accepted, the Guardianship Panel Chair will sign **Form G9** (part 2).

## Discharge

## Discharge from Guardianship should always be considered as part of the care planning process. It must also be considered every time an application is made to renew the Guardianship. (Code of Practice 30.19)

* + 1. By sending a written order of discharge to the Guardian, Guardianship under Section 7 (or section 37) of the Act can be discharged by the Responsible Clinician, by the responsible local social services authority, or by the Nearest Relative. (Section 23(2)(b) of the Act).
		2. The power of discharge conferred under Section 23 of the Act on the authority may be exercised by any three or more members of that authority authorised by them, or by three or more members of a committee or sub-committee of that authority which has been authorised by them. (Section 23(4) of the Act)
		3. The Nearest Relative can discharge Guardianship by sending written notification to LCC. The Nearest Relative does not have the powers to remove a patient from their accommodation nor make decisions about the patient's care without their consent. If there is concern that the Nearest Relative has exercised or is likely to exercise the power of discharge without due regard to the welfare of the patient or the interests of the public, consideration may be given to applying to Court for the displacement of the Nearest Relative under Section 29(d) of the Act.
		4. The date of discharge is effective from the date of the order of discharge or written notification.
		5. The Care Coordinator should inform the patient, their Nearest Relative, and others involved in the patient’s care of the discharge.

**Appendices:**

**Appendix 1**

**This document fulfils the requirements of The Mental Health Act Code of Practice Chapter 30.16 – *Responsibilities of Local Authorities,* which states:**

Each local authority should establish a policy setting out the arrangements for:

* Receiving, scrutinising and accepting or refusing applications for Guardianship. Such arrangements should ensure that applications are properly but quickly dealt with.
* monitoring the progress of each patient’s Guardianship, including steps to be taken to fulfil the authority’s statutory obligations in relation to private Guardians and to arrange visits to the patient.
* ensuring the suitability of any proposed private Guardian, and that they are able to understand and carry out their duties under the Act.
* ensuring that patients under Guardianship receive, both orally and in writing, information in accordance with regulations under the Act, including their right to have access to an independent mental health advocate (IMHA).
* ensuring that patients are aware of their right to apply to a Tribunal and that patients are given the name of someone who will give them necessary assistance, on behalf of the local authority, in making such an application.
* authorising an approved clinician to be the patient’s responsible clinician.
* maintaining detailed records relating to Guardianship patients.
* ensuring that the need to continue Guardianship is reviewed in the last two months of each period of Guardianship in accordance with the Act.
* Discharging patients from Guardianship as soon as it is no longer required.

# Appendix 2 - Legislation / Policies / Documents

# [The Mental Health Act 1983](http://www.legislation.gov.uk/ukpga/1983/20/contents)

* [**The Mental Health Act Code of Practice (2015)**](https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983)**,** specifically Chapter 30: Guardianship; and Chapter 31: Guardianship, Leave of absence or CTO?

# [Reference Guide to the Mental Health Act 1983 (2015)](https://www.gov.uk/government/publications/mental-health-act-1983-reference-guide)

* [**Mental Health (Hospital, Guardianship and Treatment) Regulations 2008**](http://www.legislation.gov.uk/uksi/2008/1184/contents/made)**.**

# [The Human Rights Act 1998](http://www.legislation.gov.uk/ukpga/1998/42/contents)

# [Mental Capacity Act 2005](http://www.legislation.gov.uk/ukpga/2005/9/contents)

# [Care Act 2014](http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted)

* [**Lincolnshire Partnership Foundation Trust – Mental Health Act Procedures**](https://www.lpft.nhs.uk/application/files/9415/8434/4918/MHA_Policy_V6.pdf)**,** specifically 5.3.19 (Section 7 Guardianship).

## Appendix 3 – Statutory Forms and Leaflets

Regulations require specific statutory forms are to be used. These are:

* **Form G1** - Guardianship application by Nearest Relative
* **Form G2** – Guardianship application by Approved Mental Health Professional
* **Form G3** – Joint medical recommendation for reception into Guardianship
* **Form G4** – Medical recommendation for reception into Guardianship
* **Form G5** – Record of acceptance of Guardianship application
* **Form G6** – Authority for transfer from hospital to Guardianship
* **Form G7** – Authority for transfer of a patient from the Guardianship of one Guardian to another
* **Form G8** – Authority for transfer from Guardianship to hospital
* **Form G9** – Renewal of authority for Guardianship
* **Form G10** – Authority for Guardianship after absence without leave for more than 28 days

All forms all available via LPFT Mental Health Act Administrators

lpn-tr.MHA@nhs.net

01522 309190 or 01522 309185

**Appendix 4 - Checklist for Guardianship applications**

|  |  |
| --- | --- |
| **Patient Name:** |  |
| **Mosaic No:** |  | **RiO Number:** |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | **Yes** | **No** | **Comments** |
| 1  | Is this a Guardianship Renewal – Form G9 \* if no, please begin at point 3 | [ ]  | [ ]  |  |
| 2 | What date is the Guardianship due to expire? | [ ]  | [ ]  | Date: |
| 3 | Is there an AMHP report attached? | [ ]  | [ ]  | Name of AMHP: |
| 4 | Does the AMHP report include the Nearest Relative’s name, address and contact details? | [ ]  | [ ]  |  |
| 5 | Has the Nearest Relative been consulted and agrees to the Guardianship? | [ ]  | [ ]  |  |
| 6 | Is there an up to date Care Plan attached?  | [ ]  | [ ]  | Date of Care plan: |
| 7 | Does the care plan include : |  |  |  |
|  | The patient's GP name, address and contact details? | [ ]  | [ ]  |  |
|  | The Responsible Clinician’s name, address and contact details? | [ ]  | [ ]  |  |
|  | The name, address and contact details of the proposed Guardian? | [ ]  | [ ]  |  |
| 8 | Is there an up to date Risk Assessment attached which clearly identifies which of the provisions apply for the Guardianship? | [ ]  | [ ]  | Date of Risk Assessment:  |
| 9 | Is the documentation signed and dated? | [ ]  | [ ]  |  |
| 10 | Confirm who has signed and dated the paperwork – is it the RC or a Nominated Medical Attendant?  | [ ]  | [ ]  | RC – Y/N Medical Attendant – Y/N |
| 11 | **Confirm which forms have been completed for the new Guardianship below:** |
|  |  | **Yes** | **No** | **Comments** |
|  | Form G1 – application by Nearest Relative | [ ]  | [ ]  |  |
|  | Form G2 – application by AMHP  | [ ]  | [ ]  |  |
|  | Confirm that the AMHP Application or the Nearest Relative Application has been completed within 14 days of the first Medical Recommendation  | [ ]  | [ ]  |  |
|  | Form G3 – Joint Medical Recommendation | [ ]  | [ ]  |  |
|  | Form G4 – Single medical Recommendation (x2) - reasons for Guardianship must be the same | [ ]  | [ ]  |  |
| 12 | Confirm that the Medical Recommendations (x 2) are no more than 5 clear days apart. \*\* this is the date of the examination not the date of the forms | [ ]  | [ ]  |  |
| 13 | Confirm if One Doctor is Section 12(2) approved | [ ]  | [ ]  |  |
| 14 | Confirm if the 2nd Doctor is the patients GP \*\* If not another Section 12(2) Doctor is required | [ ]  | [ ]  |  |
| 15 | Is the 2nd Doctor Section 12(2) Approved?  | [ ]  | [ ]  |  |
| 16 | Does the 2nd Doctor know the patient? | [ ]  | [ ]  |  |
| 17 | If the 2nd Doctor does not know the patient is there an explanation why not? | [ ]  | [ ]  |  |
| 18 | Form G6 – transfer from Hospital into Guardianship  | [ ]  | [ ]  |  |

|  |  |
| --- | --- |
| **Completed by:** |  |
| **Job Title:** |  | **Date:** |  |

## Appendix 5 – Panel Checklist

If the answers to any questions marked with an asterisk (\*) are “No” the documents must be declared invalid and new forms must be provided. In all other cases, the documents can be amended by the person who originally completed the form and returned by the applicant within 14 days.

**PART A APPLICATION**

|  |  |  |
| --- | --- | --- |
| **1\*** | Has an application been received either on Form G1 (Nearest Relative) or Form G2 (AMHP)? | [ ]  Yes[ ]  **No\*** |
| **2\*** | Does the application include the patient's name, address and contact details? | [ ]  Yes[ ]  **No\*** |
| **3\*** | Has the application been signed by the appropriate person? | [ ]  Yes[ ]  **No\*** |
| **4** | Has the application been dated? | [ ]  Yes[ ]  No |
| **5\*** | Did the applicant see the patient within 14 days of the date on the application? | [ ]  Yes[ ]  **No\*** |
| **6** | Does the application include:A Care PlanA Risk AssessmentThe Social Circumstances ReportWhich provisions of Guardianship are being applied for?If not, ask the applicant to send them to the Guardianship Coordinator as soon as possible. | [ ]  Yes[ ]  No |
| **7** | Is the patient 16 years of age or over? | [ ]  Yes[ ]  No |
| **8\*** | Is the name and contact details of the Guardian included in the application? | [ ]  Yes[ ]  **No\*** |
| **9** | Is the name and contact details of the Nearest Relative included in the application? | [ ]  Yes[ ]  No |
| **10** | Is the name and contact details of the AMHP included in the application? | [ ]  Yes[ ]  No |
| **11** | Has the application been addressed to Lincolnshire County Council | [ ]  Yes[ ]  No |

**PART B MEDICAL RECOMMENDATIONS/ RENEWALS**

|  |  |  |
| --- | --- | --- |
| **1\*** | Have two medical recommendations been received *either* on one Form G3 *or* on two separate Form G4s? | [ ]  Yes[ ]  **No\*** |
| **2\*** | Have the medical recommendations been signed (if joint recommendation: have both doctors signed the form)? | [ ]  Yes[ ]  **No\*** |
| **3** | Have the medical recommendations been dated? | [ ]  Yes[ ]  No |
| **4\*** | Is at least one doctor approved under section 12? | [ ]  Yes[ ]  **No\*** |
| **5\*** | Is the second doctor the patient's GP? If not, is the second doctor approved under section 12? | [ ]  Yes[ ]  **No\*** |
| **6** | Does at least one doctor know the patient? If not, is there an explanation why not? | [ ]  Yes[ ]  No |
| **7\*** | Have the doctors examined the patient within 5 clear days of each other (take care to check examinationdates **not** the dates the forms were signed)? | [ ]  Yes[ ]  **No\*** |
| **8\*** | Are the dates of signature for both medical recommendations the same or earlier than the date of the application? | [ ]  Yes[ ]  **No\*** |
| **9** | Do both medical recommendations give clear reasons why the patient should be received into Guardianship (including details of the patient’s presentation, risk issues and necessity for patient's welfare or the protection of others)? | [ ]  Yes[ ]  No |
| **10** | Is the Responsible Clinician registered as an Approved Clinician according to the Regional Register? | [ ]  Yes[ ]  No |
| **11\*** | Will the Guardianship panel take place within 14 days of the later of the two medical recommendations? | [ ]  Yes[ ]  **No\*** |

**PART C ALL DOCUMENTS**

|  |  |  |
| --- | --- | --- |
| **1** | Does the patient’s name, address and postcode agree exactly on all documents? | [ ]  Yes[ ]  No |
| **2** | Is all information completed in full without the use of initials or abbreviations? | [ ]  Yes[ ]  No |
| **3** | Are all alternatives / options deleted as appropriate?  | [ ]  Yes[ ]  No |
| **4** | Have all amendments made on the forms been initialled by the person who made the amendments? | [ ]  Yes[ ]  No |

|  |
| --- |
| **Completed by** **on behalf of Lincolnshire County Council by:** |
| **Name:** |  | **Job Title:** |  | **Date:** |  |

**Appendix 6 -** **Record of Guardianship**

|  |  |
| --- | --- |
| **Name of patient** |  |
| **Address** |  |
| **LCC reference no:** |  | **LPFT reference no:** |  |
| **Section 7** |[ ]  **Section 37** |[ ]

|  |  |
| --- | --- |
| **Name of AMHP** |  |
| **Contact email / tel.** |  |

|  |  |
| --- | --- |
| **Name of Care Coordinator** |  |
| **Contact email / tel.** |  |

|  |  |
| --- | --- |
| **Date of panel / accepted into Guardianship** |  |
| **Date of initial review** |  |
| **Date of subsequent reviews** |  |
| **Date of discharge** |  |

|  |  |
| --- | --- |
| **Name of Guardian** |  |
| **Address** |  |
| **Telephone No.** |  |

|  |  |
| --- | --- |
| **Name of Nearest Relative** |  |
| **Address** |  |
| **Telephone No.** |  |
| **Relationship to patient** |  |

##

## Appendix 7 – Standard Letters

**A Reception into Guardianship under the Mental Health Act (1983)**

|  |  |
| --- | --- |
| Name and address of patient | Lincolnshire County Council logo[Address][Date] |

Dear [name of patient]

**Re: Reception into Guardianship under the Mental Health Act (1983)**

A Guardianship panel convened by Lincolnshire County Council met on [date of meeting].

This letter is to confirm you were received into Guardianship with effect from [date].

Your Guardian will be [name of Guardian], who will remain in regular contact with you.

The review for your Guardianship status will take place before [date]. You will be advised of the exact arrangements closer to the date of your review.

Yours sincerely

[Guardianship Manager]

cc. [Name of Guardian]

 [Name of Nearest Relative]

 [Name of care co-ordinator]

 [Name and address of Court] \* <if applicable>

**B Continuation of Guardianship under the Mental Health Act (1983)**

|  |  |
| --- | --- |
| Name and address of patient | Lincolnshire County Council logo[Address][Date] |

Dear [name of patient]

**Re: Continued reception into Guardianship under the Mental Health Act (1983)**

A Guardianship panel convened by Lincolnshire County Council met on [date of meeting].

This letter is to confirm you remain subject to Guardianship with effect from [date].

Your Guardian will be [name of Guardian], who will maintain regular contact with you.

The review for your Guardianship status will take place before [date]. You will be advised of the exact arrangements closer to the date of your review.

Yours sincerely

Guardianship Manager

cc. [Name of Guardian]

 [Name of Nearest Relative]

 [Name of care co-ordinator]

 [Name and address of Court] \* <if applicable>