

**GUARDIANSHIP POLICY, PROCEDURES AND
GUIDANCE UNDER SECTION 7 OF THE
MENTAL HEALTH ACT 1983
AS AMENDED BY THE MENTAL HEALTH ACT
2007
WITH SUPPLEMENTARY GUIDANCE ON
SECTION 37 GUARDIANSHIP ORDER**

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| Issue Number | Date | Author(s) | Principal Changes |
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| 1 | 15/10/2008 | Wendy Gerrard | Updated/reviewed previous policy to ensure compliance with amended Mental Health Act 2007. |
| 2 | | Tim Maddocks/David Pugh/Karl Gluck | Policy reviewed in light of CQC inspection and recommendations to strengthen the emphasis on appointment of a guardian and to ensure compliance with the MCA 2005. There is now an explicit policy statement, introduction of time limits for 'acceptance' of guardianship applications, emphasis on access to IMHA, allocation of AMHPs as co-workers to the LSSA guardian and change to LA discharge arrangements. Plus new Appendices H – Flowchart on guardianship process. |
| 3 | 08/02/2019 | Lucy Brooks | Updated/reviewed previous policy to reflect changes in process since the implementation of the AMHP HUB (23/07/2018) and updated references from the MHA COP 2015. |
| 4 | September 2025 | James Green | Scheduled policy review. ² gether NHS Foundation Trust for Gloucestershire replaced with Gloucestershire Health and Care NHS Foundation Trust. Addition of recent case law. Significant changes to process to align with LAS systems and GCC governance and introduce delegation from DASS. Process map appendix replaced. Change to transfer from guardianship to hospital to align with legal requirements. |

Guardianship under Section 7/37 of the 1983 Mental Health Act as amended by the Mental Health Act 2007

| | |
|---|----|
| 1. Policy Statement | 5 |
| 2. Purpose..... | 5 |
| 3. Scope..... | 6 |
| 4. Definitions and Acronyms..... | 6 |
| 5. Legal Context | 7 |
| The Mental Health Act (Conflicts of Interest) (England) Regulations 2008 | 8 |
| 5.1 The Purpose of guardianship..... | 8 |
| 5.2 The Powers of the guardian..... | 9 |
| 5.3 Guardianship, Mental Capacity Act and Deprivation of Liberty Safeguards..... | 9 |
| 5.4 Guardianship and Hospital Care | 11 |
| 6. Mandatory procedures..... | 11 |
| 7. Practice Guidance | 12 |
| 7.1 Allocation and Assessment..... | 12 |
| 7.2 The Guardianship hearing | 13 |
| 7.2.5 Suggested Agenda | 14 |
| 7.3 The Application..... | 14 |
| 7.4 Transfer to Guardianship from Section 2 or Section 3..... | 16 |
| 7.5 Implementation of the Guardianship | 18 |
| 7.6 Conveying | 19 |
| 7.7 Renewal | 19 |
| 7.8 Guardianship application to a different LSSA..... | 21 |
| 7.9 Transfer from guardianship to guardianship (in another LA) | 21 |
| 7.10 Admission to hospital of persons subject to guardianship | 22 |
| 7.11 Transfer from guardianship to hospital..... | 22 |
| 7.12 Persons who are absent without leave..... | 23 |
| 7.13 Transfer of guardianship between Wales and England | 24 |
| 7.14 Reception into guardianship of a person removed from Scotland, Northern Ireland, the Channel Islands or the Isle of Man to England | 24 |
| 7.15 Discharge | 25 |
| 8. Implementation..... | 25 |
| 9. Monitoring and Review | 25 |
| 10. References | 27 |
| Appendix A: Deciding between guardianship, Leave of Absence and Supervised Community Treatment (Code of Practice, Ch 31) | 28 |
| CTO or longer-term leave of absence: relevant factors to consider | 29 |
| Appendix B: Time limits with respect to guardianship applications | 30 |
| Appendix C: Duties and Powers of Private guardians | 31 |
| Appendix D: LSSA responsibilities to person subject to guardianships, private guardians and nearest relative | 32 |

| | |
|---|----|
| Appendix E: Front sheet pro-forma for Guardianship Renewal Report | 33 |
| Appendix F Guidance: Guardianship under Section 37 of the Mental Health Act 1983 / 2007 | 34 |
| Appendix G: (a) Flowchart: New guardianship | 39 |
| Appendix G: (b) Flowchart: guardianship Renewal..... | 40 |
| Appendix G: (c) Flowchart: Transfer from Hospital..... | 41 |
| Appendix H: Guidance checklist on the procedure for guardianship applications | 42 |

1. Policy Statement

Gloucestershire County Council (GCC/the council) Local Social Services Authority (LSSA) welcomes applications by Approved Mental Health professional (AMHP)'s or nearest relatives for guardianship under the civil authorisation of Section 7 Mental Health Act (MHA), or via Court Order under Section 37 of the MHA. Guardianship is seen as one option to enable unrestricted persons subject to the powers of the MHA to live in the community when they might otherwise have to remain in hospital. The aim of guardianship is to provide an authoritative framework for working with a person with a minimum of constraint in order that they can live as independent a life as possible within the community. Where used it will be part of the person's overall care plan and the council will seek to maximise shared decision-making with the person subject to guardianship.

2. Purpose

The Mental Health Act Code of Practice 2015¹ (COP) specifically requires the Local Authority (LA) to establish a policy setting out arrangements for the receipt and scrutiny of guardianship applications, monitoring the progress of each person's guardianship, ensuring the suitability of any proposed private guardian, ensuring that persons receive appropriate information (to include their right to an Independent Mental Health Advocate (IMHA) and right to apply to a Mental Health Review Tribunal MHRT), authorising an approved clinician to be the person's Responsible Clinician (RC) and maintaining detailed records relating to persons subject to guardianship within its Local Authority ambit (COP 30.16).

This document replaces existing guidance and addresses the requirements of the Mental Health Act Code of Practice and Regulations (2008).

It is intended:

- To provide guidance to (AMHPs) in their consideration of whether to make a guardianship application and all those who may be required to contribute to decision making with respect to that process or its subsequent renewal and/or discharge

¹ https://assets.publishing.service.gov.uk/media/5a80a774e5274a2e87dbb0f0/MHA_Code_of_Practice.PDF

- To identify the procedures with respect to receipt of the application, renewal and discharge documentation
- To enable those with responsibilities associated with guardianship to fulfil their duties in line with the MHA, Code of Practice and Regulations

3. Scope

The policy is relevant for all AMHPs; qualified and registered staff of GCC and Gloucestershire Health and Care Trust (GHC) who could be required to act as a guardian on behalf of the Local Authority or to fulfil Local Authority duties towards a private guardian and the person under such circumstances; managers in Local Authority Adult Social Care, Children and Families Services, and within GHC who could be required to consider applications for guardianship and be responsible for the delivery of services related to guardianship; and staff of the Local Authority records and GHC Mental Health Act Administrators (who store and process the documentation).

4. Definitions and Acronyms

DASS – Director of Adult Social Services

PSW – Principle Social worker (for Adult Social Care)

AMHP – Approved Mental Health Professional

AMHP Hub – central AMHP triage and referral team (GHC)

ASC – Adult Social Care

C&F – Children and Families

COP – The Mental Health Act Code of Practice 2015

DoLS – Deprivation of Liberty Safeguards

GCC - Gloucestershire County Council

GHC – Gloucestershire Health and Care NHS Foundation Trust

Guardianship – guardianship is used to denote all civil authorisations.

A Guardianship Order is authorised by the court (MHA 1983 Section 37). The effect of a guardianship Order made by a court is similar to that of civil guardianship except that the person's nearest relative has no power of discharge (Section 40(2), (4) and Schedule 1 Part1).

IMHA - Independent Mental Health Advocate

LSSA – Local Social Services Authority

MCA – Mental Capacity Act 2005

MHA or the Act – Mental Health Act 1983 as amended by the Mental Health Act 2007.

References to the 1983 Act are to the Act as amended.

MHRT - Mental Health Review Tribunal

NMA – Nominated Medical Attendant

Person subject to guardianship – a person subject to guardianship under the Act

Private guardian – a person other than the LSSA, who acts as a guardian under the Act.

Appendix C lists the duties and powers of private guardians.

Relevant hospital – the hospital at which a person is detained

The Regulations – The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008

5. Legal Context

The Mental Health Act 1983 was amended by the Mental Health Act 2007, introducing changes to the procedures related to guardianship applications. The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 No. 1184 were laid before Parliament on 7th May 2008 for implementation on 3rd November 2008 and provide guidance on the statutory forms and procedures to be used within the context of guardianship.

Sections 7 – 10² of the Mental Health Act 1983 set out the legal framework for applications for guardianship, its effects, power for the Secretary of State to make regulations and transfer of guardian.

Section 19³ provides, subject to regulations, for transfer into guardianship from detention under an application (under Section 2 (exceptionally) but usually Section 3).

Section 20⁴ deals with the duration of guardianship and sets out the framework for renewal or expiry. Sections 21, 21A and 21B consider the arrangements for person's subject to guardianship who are absent without leave (AWOL) from the place where they are required to live

Section 23⁵ sets out the process for discharge from the guardianship order.

The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 No 1184⁶ set out the procedural requirements for, guardianship applications (5), transfer from hospital to guardianship (7), transfer from guardianship to guardianship or hospital (8), transfer from England to Wales and Wales to England (10), conveyance to hospital on transfer from guardianship (11), renewal of authority for guardianship (13), guardianship after absence without leave for more than 28 days (14) and removal to England where the person is received into guardianship (15).

² <https://www.legislation.gov.uk/ukpga/1983/20/section/7>

³ <https://www.legislation.gov.uk/ukpga/1983/20/section/19>

⁴ <https://www.legislation.gov.uk/ukpga/1983/20/section/20>

⁵ <https://www.legislation.gov.uk/ukpga/1983/20/section/23>

⁶ <https://www.legislation.gov.uk/uksi/2008/1184/contents/made>

- The Local Authority is required to arrange for an AMHP to consider a case on their behalf if they believe that a guardianship application may need to be made with respect of a person within their area
- Guardianship can be considered for people of age 16 years and over
- The person named as the guardian in a guardianship application can be either a Local Social Services Authority (LSSA) or any other person (including a nearest relative applicant)
- If the guardian is a private individual, they must state in writing that they are willing to act as guardian and the LSSA for the area in which the guardian lives must state in writing that the application is accepted. If there is a private guardian, the responsible LSSA is the one where the guardian lives. If the guardian moves to a different LSSA, the responsible LSSA becomes that authority. If the LSSA is the guardian, responsibility can also transfer between LSSAs under Section 19⁷
- If the guardian is not the LSSA, an AMHP can apply to the county court if the guardian's functions have been performed negligently or in a manner contrary to the interests of the welfare of the person. The court can order that the guardianship is transferred to the LSSA ([Section 10\(3\)](#))⁸
- The AMHP may make an application outside the area of the LSSA on whose behalf they are acting e.g. if the person is temporarily accommodated outside their home area in England or Wales

The Mental Health Act (Conflicts of Interest) (England) Regulations 2008⁹

All practitioners should refer to the above regulations which set out the circumstances in which there is a potential conflict of interest such as financial, professional or personal. (See also COP Chapter 39) Regardless of these regulations, professionals should always decline to act if they feel that their independence might be, or might be seen to be, in any way compromised.

5.1 The Purpose of guardianship

[The COP](#)¹⁰ (Chapter 30) states that 'the purpose of guardianship is to enable persons to receive care outside hospital when it cannot be provided without the use of compulsory powers'; (COP 30.2) "It provides an authoritative framework for working with a person,

⁷ n 3

⁸ <https://www.legislation.gov.uk/ukpga/1983/20/section/10>

⁹ <https://www.legislation.gov.uk/ukssi/2008/1205/contents/made>

¹⁰ n 1

with a minimum of constraint to achieve as independent a life as possible within the community. Where it is used it must be part of the person's overall care plan." (COP 30.4)

The Code also states (30.35) that "guardianship should not be used to require a patient to reside in hospital except where it is necessary for a short time in order to provide a shelter while accommodation in the community is being arranged".

And further: "guardianship must not be used to impose restrictions that amount to a deprivation of liberty." (COP 30.5)

Care under guardianship requires high levels of professional skill to deliver elements of compulsion alongside freely agreed co-operation with the person subject to guardianship.

5.2 The Powers of the guardian

5.2.1 A guardian has the power to:

- a) Decide where the person should live (COP 30.27). This decision of the guardian takes precedence over an attorney or deputy appointed under the Mental Capacity Act 2005 (COP 30.3)
- b) Take the person for the first time to the place where they are required to live, if persons do not (or cannot) go there without assistance (COP 30.28)
- c) Take into legal custody and return the person to the place where they are required to live, if they leave the address without the agreement of the guardian (COP 30.30)
- d) Require the person to attend specified places at specified times for medical treatment, occupation, education or training (COP 30.3) but cannot use force to take them there
- e) Demand that a doctor, AMHP or another relevant person has access to the person at the place where the person lives (COP 30.3)

5.3 Guardianship, Mental Capacity Act and Deprivation of Liberty Safeguards

5.3.1 The power to require persons to reside in a particular place does not include a power to deprive them of their liberty. Guardianship will not be appropriate for a person who has the capacity to decide where to live and will not reside in the place they are required to live by their guardian, unless they were to be deprived of their liberty under the Act (COP 30.31).

5.3.2 Where a person lacks capacity to make some or all important decisions concerning their own welfare, one potential alternative to guardianship will be to rely solely on the MCA, especially the protection from liability for actions taken in connection with care or treatment provided by Section 5 of the MCA. Whilst this is a factor to be taken into account, it will not, by itself, determine whether guardianship is necessary or unnecessary. AMHPs and doctors need to consider all the circumstances of the particular case.

5.3.3 Deprivation of Liberty Safeguards (DoLS) authorisations can not be granted in respect of people under guardianship where the deprivation of liberty would not be in accordance with the requirement of the guardianship regime (see [MCA 2005 Schedule 1A](#)¹¹ paragraph 2).

5.3.4 If the person lacks the capacity to decide where to live, they may be deprived of their liberty if this is authorised separately by either (a) a DoL authorisation in respect of a hospital or care home placement if they are 18 or over; or (b) by a Court of Protection order made by the Court of Protection under the MCA in respect of other community settings if they are 16 or over. If it is appropriate for deprivation of liberty to be authorised under the MCA, the local authority should consider whether guardianship remains appropriate. In [CC v Blackburn & Darwen Borough Council \(2011\) EWHC 3321 \(CoP\)](#)¹² Judge Jackson found that the combination of guardianship and DoLS in the circumstances of the case brought before him should be 'an alerting factor to the appropriateness of guardianship'. The MHA COP discusses the difference between guardianship and the use of the MCA in Chapter 30. It is strongly recommended that legal advice is sought where consideration is being given to combining the two measures.

5.3.5 [NL v Hampshire County Council \(2014\) UKUT 475 \(AAC\)](#)¹³ Judge Jacobs challenges whether guardianship, of itself, could ever amount to a Deprivation of Liberty, given its limited powers of compulsion. In this case, he determined that it was, in fact, the restrictive nature of the accompanying care plan which gave rise to any concerns that

¹¹ <https://www.legislation.gov.uk/ukpga/2005/9/schedule/1A>

¹²

[https://www.mentalhealthlaw.co.uk/Re_C;_C_v_Blkburn_and_Darwen_Borough_Council_\(2011\)_EWHC_3321_\(COP\)](https://www.mentalhealthlaw.co.uk/Re_C;_C_v_Blkburn_and_Darwen_Borough_Council_(2011)_EWHC_3321_(COP))

¹³ [https://www.mentalhealthlaw.co.uk/NL_v_Hampshire_CC_\(2014\)_UKUT_475_\(AAC\),_\(2014\)_MHLO_107](https://www.mentalhealthlaw.co.uk/NL_v_Hampshire_CC_(2014)_UKUT_475_(AAC),_(2014)_MHLO_107)

the situation constituted a Deprivation of Liberty. The importance is therefore emphasised in this case of ensuring a comprehensive care plan is provided alongside any guardianship application, ensuring that its components to do not amount to a Deprivation of Liberty.

5.3.6 [A Local Authority v AB \[2020\] EWCOP 39](#)¹⁴ A 36 year old woman with Asperger's syndrome in supported living and subject to guardianship with a residence requirement. Her care arrangements met the acid test and she lacked the mental capacity to consent to them. Court order granted to authorise the deprivation of liberty. Again findings were the guardianship order alone does not amount to a deprivation of liberty but that it is a very significant restriction of liberty.

5.4 Guardianship and Hospital Care

5.4.1 Guardianship does not prevent an authorisation being granted under deprivation of liberty safeguards (DoLs) if the person needs to be detained in a hospital in their best interests in order to receive care and treatment, providing:

- It would not be inconsistent with the guardian's decision about where the person subject to guardianship should live (COP 30.34), and
- The person subject to guardianship does not object to being kept in hospital for treatment for mental disorder or to receiving that treatment

6. Mandatory procedures

6.1 The COP (Chapter 30: 8-15) requires the AMHP to assess and consider **whether**:

- the grounds for guardianship are met
- the person 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
- the objectives of the proposed application could be achieved in another, less restrictive, way, without the use of guardianship
- the use of the MCA 2005 and consideration of a Deprivation of Liberty authorisation would be more appropriate if the person lacks capacity to make some/all of the important decisions regarding their welfare
- there is a particular need for a single person or authority to make decisions

¹⁴ <https://www.39essex.com/information-hub/case/local-authority-v-ab>

- regarding where the person should live
- it is necessary for there to be an explicit statutory authority for the person to be returned to the place where they should live if they go absent
- it is clear that the power of recall is not needed
- the nearest relative wishes to object to the guardianship

7. Practice Guidance

7.1 Allocation and Assessment

7.1.1 When guardianship is seriously suggested as the next course of action the principle of proceeding in this way and the processes involved should be discussed with professionals in the AMHP Hub at the earliest opportunity, for advice, support and guidance. Appendix G provides a flow chart of the guardianship process from consideration of the application through to discharge.

7.1.2 The case should be allocated urgently to a worker within the team responsible for pursuing the guardianship. (An Adult Social Care team for Learning Disabilities, Older Person's Mental Health, C&YPD for Children and Young People Service (CYPD) cases for young people of 16 years and over or GHC team for adults of working age mental health.)

7.1.3 If the allocated worker is not an AMHP, then joint allocation with an AMHP, across team boundaries if necessary, must be arranged by the responsible team (as above). Where the person drawing on our services is from Learning Disability or Older Age services then an AMHP employed by the Local Authority should be approached.

7.1.4 The allocated worker and / or AMHP must discuss the case between them and with others involved in order to confirm that guardianship remains an appropriate course of action. Central to this will be the views of the nearest relative, who will have the right to object. Appendix A provides guidance on deciding between guardianship, [Leave of Absence](https://www.mentalhealthlaw.co.uk/Leave_of_absence)¹⁵ and [Community Treatment Order](https://www.mentalhealthlaw.co.uk/Community_Treatment_Order)¹⁶.

7.1.5 If the worker and/or AMHP agree that no less restrictive or more appropriate alternatives are available, a guardianship hearing should be arranged.

¹⁵ https://www.mentalhealthlaw.co.uk/Leave_of_absence

¹⁶ https://www.mentalhealthlaw.co.uk/Community_Treatment_Order

7.2 The Guardianship hearing

Attendees and Roles

7.2.1 The hearing will be chaired by the Principal Social Worker (PSW) if the person drawing on our services has a psychiatrist other than in working age adult mental health. For working age adults, the hearing will be chaired by the Principal Social Worker (PSW) with support from an AMHP. Team clerks will take minutes. The meeting should:

- a) confirm that the grounds for guardianship are met, namely that
 - i. the person is suffering from mental disorder of a nature and degree which warrants their reception into guardianship (note: a learning disability is not a mental disorder unless associated with abnormally aggressive or seriously irresponsible behaviour)
 - ii. it is necessary in the interests of the welfare of the person or the protection of others that the person is accepted into guardianship
- b) determine who should be the guardian
- c) decide whether a Responsible Clinician (RC) or Nominated Medical Attendant (NMA) should have continued involvement
- d) consider an initial draft care plan as referred to below, addressing any potential funding issues through the usual funding panel procedures.

7.2.2 Those invited to attend the hearing should include the allocated worker and / or AMHP, GP, psychiatrist, person drawing on our services, nearest relative (with the persons agreement), Community Mental Health Nurse (CMHN), other involved members of the care team, prospective guardians, legal advisor if required, together with family, friends and others significant in the health and welfare of the subject of the meeting

7.2.3 Consider if there is a need for an interpreter or advocate and, if the person drawing on our services lacks capacity to make decisions with respect to guardianship, there is an appointed deputy or attorney who should be invited.

7.2.4 The AMHP should ensure that there is no potential conflict of interest between the assessors, person drawing on our services and nearest relative.

7.2.5 Suggested Agenda

- a) Introductions and purpose of the meeting
- b) Brief history / what has led up to the need to consider guardianship? (All present in turn state the nature of their input to date)
- c) Are the grounds for guardianship met?
- d) Who should be the guardian?
- e) Clarification of a community RC / NMA
- f) Draft care plan consideration
- g) Clarification of which guardianship powers are to be used and how the guardian will exercise them
- h) Next steps: e.g. who is going to be the potential applicant (AMHP or nearest relative) and who is going to do what and when (this could include the AMHP assisting the nearest relative with following procedures)
- i) Future case responsibility / allocation
- j) Review plans

7.3 The Application

- 7.3.1 If the person is not currently detained under the MHA, two medical recommendations are required, either completed jointly on Form G3 or separately on Form G4 (medical examinations must have taken place no more than 5 clear days apart). Appendix B provides time limits in respect of guardianship applications.
- 7.3.2 The AMHP formally considers the suitability of the proposed guardian before proceeding further.
- 7.3.3 If the proposed guardian is not the LSSA, the allocated worker / AMHP obtains a statement from the prospective private guardian that they are willing to act as such using Part 2 of Form G1 (if the nearest relative is the applicant); Part 2 of G2 (if the AMHP is the applicant) if the person is not currently detained; or Part 2 of Form G6 if the person is currently detained. Private guardians have the duty to act in the same way as a local authority guardian, with the added requirement that they keep the panel up to date with any changes in circumstances, and reports for renewal etc. The local authority, in turn, will appoint a social worker to provide support to the private guardian as necessary.

- 7.3.4 The applicant, whether the AMHP or the nearest relative, must interview the person within 14 days of the last medical examination
- 7.3.5 Either the nearest relative (Form G1, Part 1) or the AMHP (Form G2, Part 1) proceeds to make an application under Section 7 on the basis of the 2 medical recommendations if the person is not detained and that is their decision.
- 7.3.6 The AMHP prepares an AMHP Report whether they are the applicant or supporting the Nearest Relative with their application.

The guardianship application must be completed, signed by the AMHP (or nearest relative) and forwarded, together with the medical recommendations, the AMHP Report and the draft care plan, (including particularly the name of the guardian, nearest relative, RC/NMA, allocated worker and the requirements of the guardianship) to the DASS (or formally delegated officer in his/her absence) of the responsible LSSA within 14 days of the date on which the person was last examined by a doctor for the purposes of the application. A copy should be sent to the MHA (Mental Health Act) Administration at Charlton Lane Hospital at the same time, this can be electronically to MHAadministration@nhs.glos.uk. It is preferable to deliver the original documents in person if possible and to arrange a time to meet with the DASS (or formally delegated officer in his/her absence) to allow joint scrutiny of the documents. If this is not possible, it is recommended that documents are sent via recorded delivery. If the application is accepted, the DASS (or formally delegated officer in his/her absence) completes Form G5, which includes the date on which the application is accepted on behalf of the LSSA. The allocated worker is responsible for again preferably delivering the original documents in person, including original paperwork/application, medical recommendations and signed G5, to MHA administrators at Charlton Lane Hospital. If this is not possible, again it is recommended that documents are sent via recorded delivery. Copies will be retained and uploaded to LiquidLogic by the allocated worker.

- 7.3.7 The responsible authority for guardianship is that in which the person resides which makes it possible in certain circumstances for a person placed in another Local Authority to be the responsibility of Gloucestershire County Council under guardianship (where still considered a Gloucestershire resident). In these circumstances this policy must be adhered to, however there will be no input from

Gloucestershire MHA administrators in these circumstances and original paperwork will need to be retained by Gloucestershire County Council.

7.3.8 If the application is incorrect, the same medical recommendations can be used, rectify the errors and make a fresh application within the 14 days from the last medical examination. On receipt of all the relevant guardianship documentation (Sec 7 paperwork) from the AMHP, the MHA Administrator will write to the subject of the guardianship informing them they are now subject to guardianship. This should be done immediately and by the third working day of acceptance into guardianship at the latest.

7.3.9 The nominated guardian or allocated worker is responsible for entering the application on to LiquidLogic showing the start date of the guardianship as the date on which the application is accepted stated on form G5 and set the review date as the date of expiry of the guardianship. If the LSSA is the guardian, they will ensure that they (the member of staff identified to be the nominated guardian) is entered on to LiquidLogic and if a private guardian has been accepted by the LSSA, ensure that them (the allocated worker) is named on LiquidLogic to fulfil the statutory duties towards the person and the guardian.

7.4 Transfer to Guardianship from Section 2 or Section 3

7.4.1 If the person is being transferred from detention under Section 2 (exceptionally) or Section 3 of the Act, the managers of the relevant hospital provide the authority for transfer under Section 19, using Part 1 of Form G6, under Regulation 7(4) of the Mental Health Regs 2008. These require that hospital managers record the agreement of the relevant social services authority and specify when it is to come into effect. If, exceptionally, the guardian is not going to be the Local Authority, they also have to have that person's agreement.

The decision to agree the transfer will be supported by a brief report:

- appraising the appropriateness of the proposed care plan
- describing the consultation with the person drawing on our services, nearest relative, RC/NMA (and proposed guardian if already known)
- recommending whether the transfer to guardianship is suitable in the circumstances and giving due consideration to whether less restrictive options are appropriate

The date must predate the expiry of the period of detention. Medical Records will attach a local form to Form G6 in which the acceptance into guardianship can be recorded on behalf of the DASS. Transfer to guardianship will be agreed by the PSW or Director of Operations, on behalf of the DASS. Only then can the form G6 be completed with the date on which transfer was agreed with the LSSA and the date on which the transfer is to take place triggered. If the person becoming subject to guardianship is not already allocated to a social worker (post discharge) then a referral will be made. In these circumstances it may also be decided that a guardianship hearing will be held whilst not to decide if the grounds for guardianship are met, this meeting can still:

- a) determine who should be the guardian
- b) decide whether a Responsible Clinician (RC) or Nominated Medical Attendant (NMA) should have continued involvement
- c) consider an initial draft care plan as referred to below, addressing any potential funding issues through the usual funding panel procedures.

Persons transferred from a Section 2 or 3 are treated as if they are subject to a guardianship application that was accepted /commenced on the start date of their preceding section i.e. the date for the renewal of the guardianship would run from the start of the preceding Section 3 (or Section 2 if this had not been converted to a Section 3). Where renewal is likely to coincide with the date of transfer steps should be taken to ensure regrading/renewal of the s2/3 takes place prior to the transfer.

- 7.4.2 If the LSSA is to be the guardian, an individual (often but not essentially an AMHP) is nominated to act in that capacity. If the guardian is a private individual, then an allocated worker will be appointed to fulfil statutory duties with respect to the person and to liaise with and assist the guardian.
- 7.4.3 The nominated guardian or allocated worker is responsible for entering the application on to LiquidLogic showing the start date of the guardianship as the date on which the transfer into guardianship is to take place as stated on Form G6, and set the review date as the date of expiry of the guardianship. If the LSSA is the guardian, they will ensure that they (the member of staff identified to be the nominated guardian) is entered on to LiquidLogic and if a private guardian has been accepted by the LSSA, ensure that them (the allocated worker) is named on

LiquidLogic to fulfil the statutory duties towards the person and the guardian.

7.5 Implementation of the Guardianship

- 7.5.1 Near to the time of the application, a final and comprehensive care plan should be produced which incorporates the names of the RC (who must be an Approved Clinician)/NMA, nominated guardian and allocated worker if different, who will have an ongoing involvement in the subject's care and treatment. The plan should include a statement of which guardianship powers the guardian will be exercising (residence and/or attendance and/or access) and how a guardianship case will remain allocated to a qualified worker (not necessarily AMHP) throughout (see Appendix D). When allocating, consideration should be given to the different roles that an individual worker has and any potential for conflict (e.g. AMHP, Care Co-Ordinator, Care Manager). Where the allocated worker is not an AMHP, an AMHP must be allocated for oversight of the case. Such oversight is based on a consultancy type role and does not infer active case management engagement. This remains the case when the Local Authority is the guardian or when the role is held by a private individual. The allocated worker should visit at least 3 monthly and ensure that a Section 12 doctor (for England and Wales) or an Approved Clinician visits at least every 12 months.
- 7.5.2 The allocated worker will make an automatic referral to the local IMHA service unless the person makes a capacitated refusal of this service.
- 7.5.3 The person now subject to guardianship should be advised of this verbally and in writing as soon as possible. The person should be provided with information in the same way as those detained in hospital. In hospital, ward staff would take responsibility for this soon after admission. In the case of guardianship, it will be the allocated worker's duty to ensure this is done, taking advice from the AMHP as necessary. The information will normally include an information leaflet including details of their rights (including the right of appeal), a copy of form G5 or G6, the care plan with, essentially, details of the guardian, nearest relative, allocated worker, RC/NMA and the requirements of the guardianship. The health and social care case file(s) on LiquidLogic should indicate that all this has been done
- 7.5.4 The nearest relative (if practicable), Responsible Clinician (RC) or Nominated Medical Attendant (NMA) and GP should also receive the same relevant information from the

allocated worker.

7.5.5 Copies of all the forms, AMHP Report and care plan should be retained safely in the legal section of the case file and the originals sent to , MHA (Mental Health Act) Administration

at Chalton Lane Hospital (on the basis of an agreement reached between the LSSA and GHC that they will arrange for the medical recommendation and application forms to be scrutinised and will monitor guardianships in terms of dates of review, discharge and expiry).

7.6 Conveying

7.6.1 Amendments to the 1983 Act in the Mental Health Act 2007 give powers to convey the person subject to guardianship to a residential home or other care setting. The COP (30.28) states that “this power can also be used to take persons for the first time to the place they are required to live, if persons do not (in or practice cannot) go there by themselves.”

7.6.2 Section 18 (7) MHA 1983¹⁷ provides a power to take a person who is subject to guardianship to a place where they are required to be. Reasonable force may be used to ensure that the person is taken to that place (section 137).

7.7 Renewal

7.7.1 Guardianship lasts for 6 months initially, renewable for 6 months and then every 12 months. These periods run from the date of the original guardianship or, if transferred from a Section 3 (or 2) from the start date of that preceding Section. GHC MHA (Mental Health Act) Administration will issue reminders two months and one month prior to the expiry of a guardianship to the RC/NMA, guardian/nominated guardian and allocated worker, to allow adequate time for consultation and completion of the process.

7.7.2 Two months before expiry of the guardianship, the LSSA guardian / allocated worker or private guardian will request a form G9 report from the person drawing on our services RC or NMA. This will be done by MHA (Mental Health Act) Administration at Chalton Lane Hospital on behalf of GCC. Advice may also be sought from the AMHP Hub.

¹⁷ <https://www.legislation.gov.uk/ukpga/1983/20/section/18>

7.7.3 The LSSA guardian/allocated worker and private guardian supported as necessary by the allocated worker will each complete a brief report:

- appraising the appropriateness of the care plan
- describing the consultation with the person drawing on our services, nearest relative, RC/NMA (and guardian if the report is by the allocated worker)
- making proposed amendments to the care plan
- recommending whether the guardianship should continue and giving due consideration to whether the order can be discharged or if less restrictive options are now appropriate

7.7.4 The documents prepared by staff acting on behalf of the LSSA should be accompanied by a front sheet (see Appendix E). When private guardians have to make reports or give information to the LSSA, this may be done in any way which is agreed by the LSSA including orally or by e-mail. (Regulation 22.2).

7.7.5 Form G9 will be forwarded to the DASS (or formally delegated officer in their absence) of the responsible LSSA with the report(s) by the allocated worker and guardian and the care plan updated with amendments as necessary, particularly regarding the requirements of the guardian, (residence, attendance and access) for scrutiny and potential acceptance. The date the G9 form is furnished to the DASS must be recorded, and this must be before the expiry of the current guardianship. A copy should be sent to the MHA (Mental Health Act) Administration at Charlton Lane Hospital at the same time, this can be electronically to – MHAadministration@nhs.glos.uk.

The LSSA must always consider discharging the guardianship when a report is made for renewal by the RC or NMA. The DASS, on behalf of the LSSA, will consider all the reports and decide whether to convene a panel to consider discharge in accordance with para 7.15 of this policy.

7.7.6 Should the guardianship be successfully renewed, the allocated worker/nominated guardian together with their team manager will ensure that:

- the person subject to continued guardianship, their nearest relative, guardian, RC/ NMA and GP are all provided with copies of the renewal (form G9) and care plan
- the original documents are delivered in person preferably or by recorded delivery to the MHA (Mental Health Act) Administration of Charlton Lane Hospital to join the original guardianship order papers within three working days

- the person/subject is reminded of their right of appeal (with appropriate leaflet)
- the person/subject is reminded of their right of access to an IMHA

7.7.7 LiquidLogic should be updated by the allocated worker/nominated guardian. If the guardianship is renewed, the date of the next review date should be set as the expiry date of the order which will be 6 months from the date of the original order in the first instance, a further 6 months at the time of the second renewal and annually thereafter. GHC Mental Health Act administrators of the MHA (Mental Health Act) Administration will issue reminders two months and one month prior to the expiry of a guardianship order to the RC/NMA, guardian and allocated worker, to allow adequate time for consultation and completion of the process. (in practice only RC is contacted by MHA admin).

7.8 **Guardianship application to a different LSSA**

7.8.1 If a person, who appears to be willing and able to act as a private guardian for a Gloucestershire person, lives outside Gloucestershire, the LSSA for that locality is the authority with responsibility for considering the guardianship application or agreeing the transfer from hospital to guardianship. If a person is placed in an address in a different LSSA, Gloucestershire County Council would remain the responsible LSSA unless a transfer is agreed to another authority. LiquidLogic and the Mental Health Act administrators should be updated accordingly.

7.8.2 Out of County Local Authorities who place a subject of guardianship in Gloucestershire should inform GCC & GHC of such placements.

7.9 **Transfer from guardianship to guardianship (in another LA)**

7.9.1 [Under paragraph 8\(1\) of the Regulations](https://www.legislation.gov.uk/uksi/2008/1184/regulation/8/made)¹⁸ a person subject to guardianship may transfer into the guardianship of another LSSA or person. The person and nearest relative (where practicable) should be included in consideration of such a change and advised promptly of the decision. The transfer is facilitated by completion by the guardian of Part 1 of form G7.

7.9.2 If the current guardian is Gloucestershire County Council, the DASS (or formally delegated officer in his/her absence) of the LSSA would be the signatory.

¹⁸ <https://www.legislation.gov.uk/uksi/2008/1184/regulation/8/made>

- 7.9.3 If the new guardian is to be a private guardian it is necessary for the new private guardian to complete Part 2 of form G7, stating their willingness to act as guardian.
- 7.9.4 If a different LSSA is required to be the responsible authority because the proposed new private guardian lives in another area or because the guardian is wanting to transfer the role of guardian to that authority, the guardian must gain agreement from that authority to the transfer and the date of transfer.
- 7.9.5 The original forms should be forwarded as required by the authority if other than Gloucestershire. If Gloucestershire remains the LSSA, the originals should be sent to the Mental Health Act administrator (MHA (Mental Health Act) Administration) at Charlton Lane Hospital. Copies of the documents will be placed on the person's health records and changes must be recorded on to LiquidLogic.
- 7.9.6 The allocated worker should expect to support the above processes. The Gloucestershire AMHP Hub may be consulted.

7.10 Admission to hospital of persons subject to guardianship

- 7.10.1 A person subject to guardianship may be admitted to hospital, with their guardianship remaining in force, for their mental or physical health care as a voluntary or informal person, under Deprivation of Liberty Safeguards (when available) or under Sections 2 or 4 of the MHA. Civil person subject to guardianship ceases to be subject to guardianship if they are detained on the basis of an application for treatment under Section 3.

7.11 Transfer from guardianship to hospital

- 7.11.1 Under Paragraph 8(2)¹⁹ of the Regulations a person subject to guardianship can be transferred to hospital when, following assessment, two registered medical practitioners complete medical recommendations for treatment under Section 3 of the MHA using form A7 for joint recommendations or form A8 for separate recommendations and an AMHP has completed an application using Form A6. The AMHP would arrange an appointment with the DASS (or formally delegated officer in his/her absence) to seek completion of Part 1 of form G8 to agree the transfer. All forms

¹⁹ n 18

(A6, A7/8 and G8) with the AMHP Report should be made available for consideration. The decision would include scrutiny of the documents and being satisfied that arrangements have been made for the person to be admitted to hospital within 14 days from the date of the last medical examination. Copies of the documents should be placed on the health and social care file(s). The originals should be sent to the MHA (Mental Health Act) Administration at Charlton Lane Hospital. The changes must be entered on to LiquidLogic.

7.12 Persons who are absent without leave

7.12.1 Persons subject to guardianships who are absent without leave from the place where they are required to live may be “taken into custody” and returned to that place by any officer on the staff of an LSSA, by any constable, or by any person authorised in writing by the LSSA or by the private guardian.

- A copy of the current guardianship on form G5, G6, G7 or G9 should be made available to the person who will be returning the person subject to guardianship.
- Consideration should be given to how the person will be conveyed (see the Conveyance Policy). If authorisation is needed to support the conveyance of the person subject to guardianship by ambulance, with the police or with an individual, the Joint Risk Assessment and Authorisation to Convey form which forms part of the Conveyance policy should be used.
- Consideration may need to be given regarding whether the person is being assisted to absent themselves by another person who could be guilty of an offence under [section 128 of the MHA](#)²⁰
- Consideration may need to be given to the need to apply for a warrant under [Section 135\(2\) MHA](#)²¹, as the person is already ‘liable to be detained’.

7.12.2 If the person returns or is returned after being absent for more than 28 days but still within the duration of the guardianship, the RC / NMA must examine the person within 7 days of the “return” day and complete form G10, stating that the criteria for continued guardianship are met. If this takes place within the two months of the expiry of the order, the RC / NMA must advise whether the report constitutes a request for renewal or not. However, no consultation is required beyond the report being forwarded to the DASS (or formally delegated officer in his/her absence) of the

²⁰ <https://www.legislation.gov.uk/ukpga/1983/20/section/128>

²¹ <https://www.legislation.gov.uk/ukpga/1983/20/section/135>

relevant LSSA for signature of receipt.

- 7.12.3 If the person subject to guardianship is absent without leave on the day that, or within a week before, the date on which the guardianship would expire and the guardianship has not been renewed, and the person returns or is “taken into custody” under Section 18²² to the place where they are required to be, the guardianship is effectively extended for 7 days from the date of return, to allow the renewal report to be prepared.
- 7.12.4 If they do not return voluntarily and are not returned compulsively under section 18 before the end date of the current guardianship, it cannot be renewed.

7.13 Transfer of guardianship between Wales and England

- 7.13.1 Where a person subject to guardianship is transferred from guardianship with an English LSSA to the guardianship of a Welsh LSSA, the English Regulations, and forms will apply.
- 7.13.2 Where a person subject to guardianship is transferred from guardianship with a Welsh LSSA to guardianship of an English LSSA, [the Welsh Regulations](#)²³, forms and authority to convey, will apply.

7.14 Reception into guardianship of a person removed from Scotland, Northern Ireland, the Channel Islands or the Isle of Man to England

- 7.14.1 The guardian (in this case the DASS (or formally delegated officer in his/her absence) of the LSSA or private guardian) will record on form M1 the date on which the person arrives at the place at which they are required to reside on their reception into guardianship. The guardian should notify the person’s nearest relative of the person’s receipt into guardianship as soon as practicable. If the LSSA is the guardian, the form should be copied for the health and social care file(s) and the original sent to the appropriate Mental Health Act administrator at Charlton Lane Hospital. A private guardian is required to notify the LSSA of the date of reception into guardianship, the name of the NMA, the address of the guardian and the person and any permanent change to either address within 7 days of the change. These details should be entered on to LiquidLogic along with the name of the allocated worker and/or guardian.

²² n 17

²³ <https://www.legislation.gov.uk/wsi/2008/2439/contents/made>

7.15 Discharge

7.15.1 The LSSA can order the discharge of the guardianship at any time and must always consider doing so when a report is made for renewal by the RC or NMA. Where the LA wishes to discharge the guardianship an order for discharge can be made by the RC, authorised by the LSSA or, most commonly, the person's nearest relative at any time and without notice. The nearest relative's order cannot be barred. The order must be in writing to the LSSA. The LSSA can order the discharge of the guardianship at any time and must always consider doing so when a report is made for renewal by the RC or NMA. Where the LA wishes to discharge the guardianship, this will be through the creation of a one off panel of three or more members of the LSSA or three or more members of a Committee or sub Committee of the LSSA which will be authorised for this purpose. The NMA and private guardian do not have the authority to discharge the person subject to guardianship. The LSSA can order the discharge of the guardianship at any time. It must always consider doing so when a report is made for renewal by the RC or NMA.(see para 7.7.5) Where the LA is considering discharging the guardianship a one-off panel of three or more members of the LSSA or three or more members of a Committee or sub Committee of the LSSA will be created which will be authorised for this purpose.

7.15.2 If the person subject to guardianship is resistive to the requirements of the guardianship, consider if amendments to the requirements, care plan or guardian could assist the situation, before seeking discharge the guardianship order.

8. Implementation

8.1 The revised guidance will be published on the GCC policy website and disseminated to locality AMHPs via the locality AMHP HUB, peer supervisions and AMHP forums.

9. Monitoring and Review

9.1 The policy, procedures and guidance will be monitored through the locality and county AMHP forums and the guardianship registration records. It will be reviewed in accordance with the GCC policy review procedures.

9.2 The policy will be reviewed by September 2027.

9.3 Process for monitoring compliance & assurance

| | |
|--|-----|
| Are the systems or processes in this document monitored in line with national, regional, or Local Authority/Health Trust local requirements? | YES |
|--|-----|

| Monitoring Requirements and Methodology | Frequency | Further Actions |
|---|-----------|---|
| GCC ASC Practice Quality Board will be responsible for ensuring this policy is monitored. | Ongoing | <p>ASC operational leads and the AMHP lead (GHC) will be responsible for sharing information (via appropriate team meetings/staff groups).</p> <p>Operations leads to bring any practice issues/feedback to ASC Practice Quality Board.</p> <p>There will be the opportunity to feed into GCC webinars, Lunch & Learns and thread through Inductions for new staff.</p> |
| The PSW alongside the DASS will ensure the monitoring and oversight of a register of those subject to Guardianship. This to be reported via ASMT. | Ongoing | <p>Supplemental health register maintained via GHC MHA administrators – this already in place but to continue.</p> <p>Process maps setting out requirements for LAS input and electronic data storage.</p> |

10. Dispute Resolution

10.1 The policy is subject to both the GHC disputes Policy and the GCC processes. AMHPs will follow the dispute policy of their employment organisation. Disputes and grievances can be dealt with following these local policies.

11. Incident And Near Miss Reporting And Regulation 20 Duty Of Candour Requirements

- 11.1 GCC will follow the usual pathways for escalation incidences.
- 11.2 To support monitoring and learning from harm, AMHPs will utilise the GHC Incident Reporting System, DATIX. For further guidance, staff and managers should reference the [Incident Reporting Policy](#). For moderate and severe harm incidents, Regulation 20 Duty of Candour requirements must be considered and guidance for staff can be found in the [Duty of Candour Policy](#) and Intranet resources. The AMHP Service manager is responsible for reporting AMHP specific incidents back to the LSSA.

12. References

Mental Health Act (Sects. 7 - 10)

Mental Health Act (Section 19)

Mental Health Act Code of Practice: Chapter 30, 31, 35 and 39

Reference Guide to the Mental Health Act 1983 as amended by the Mental Health Act 2007: Chapter 19; Chapter 13: 30 – 38;

The Mental Health (Hospital, guardianship and Treatment) (England) Regulations 2008 No 1184

Mental Health Act Manual 15th Edition: Richard Jones

Mental Capacity Act 2005 Code of Practice

Mental Capacity Act 2005 Deprivation of Liberty Safeguards supplement

The Mental Health (Conflicts of Interest) (England) Regulations 2008

Working with the MHA 3rd Edition. Steven Richards & Aasya Mughal.

CC v Blackburn & Darwen Borough Council 9 2011 EWHC 3321 (Court of Protection)
www.mentalhealthlaw.co.uk

NL v Hampshire County Council (2014) UKUT 475 (AAC)

Herefordshire Council guardianship Policy s7 MHA 1983/2007 2012

Appendix A: Deciding between guardianship, Leave of Absence and Supervised Community Treatment (Code of Practice, Ch 31)

A1. There are three ways in which an unrestricted person may be subject to the powers of the Act while living in the community: guardianship, Leave of Absence and Community Treatment Order (CTO).

A2. **Guardianship (Section 7 of the Act)** is social care-led and is primarily focused on people with welfare needs. Its purpose is to enable persons to receive care in the community where it cannot be provided without the use of compulsory powers.

A3. **Leave of Absence (Section 17)** is primarily intended to allow a person detained under the Act to be temporarily absent from hospital where further in-person treatment as a detained person is still thought to be necessary. Most suitable for short-term absences, its use is intended to allow visits to family, home and community. It may also be useful in the longer term, where the clinical team wish to see how the person manages outside hospital before making the decision to discharge. However, for a number of persons, CTO may be a better option than longer-term leave for the ongoing management of their care. Reflecting this, whenever considering longer-term leave for a person (i.e. for more than seven consecutive days), the responsible clinician must first consider whether the person should be discharged onto SCT instead.

A4. **Community Treatment Order (Section 17A)** is principally aimed at preventing the “revolving door” scenario and the prevention of harm which could arise from relapse. It is a more structured system than leave of absence and has more safeguards for persons. A key feature of CTO is that it is suitable only where there is no reason to think that the person will need further treatment as a detained in-person in the present circumstances, but the responsible clinician needs to retain the power to be able to recall the person to hospital.

APPENDIX A continued

Some pointers to the use of the three options are given in the following boxes.

CTO or longer-term leave of absence: relevant factors to consider

| Factors suggesting longer-term leave | Factors suggesting CTO |
|---|---|
| <p>Discharge from hospital is for a specific purpose or a fixed period.</p> <p>The person's discharge from hospital is deliberately on a "trial" basis.</p> <p>The person is likely to need further in-person treatment without their consent or compliance.</p> <p>There is a serious risk of arrangements in the community breaking down or being unsatisfactory – more so than for CTO</p> | <p>There is confidence that the person is ready for discharge from hospital on an indefinite basis.</p> <p>There are good reasons to expect that the person will not need to be detained for the treatment they need to be given.</p> <p>The person appears prepared to consent or comply with the treatment they need – but risks as below mean that recall may be necessary.</p> <p>The risk of arrangements in the community breaking down, or of the person needing to be recalled to hospital for treatment, is sufficiently serious to justify CTO, but not to the extent that it is very likely to happen.</p> |

CTO or guardianship: relevant factors to consider

| Factors suggesting guardianship | Factors suggesting CTO |
|--|---|
| <p>The focus is on the person's general welfare, rather than specifically on medical treatment.</p> <p>There is little risk of the person needing to be admitted compulsorily and quickly to hospital.</p> <p>There is a need for enforceable power to require the person to reside at a particular place.</p> | <p>The main focus is on ensuring that the person continues to receive necessary medical treatment for mental disorder, without having to be detained again. Compulsory recall may well be necessary, and speed is likely to be important.</p> |

Appendix B: Time limits with respect to guardianship applications

| Action | Time Limit | Example |
|--|---|--|
| Application | The applicant must have personally seen the person within the period of 14 days ending on the date of the application. | If the applicant last saw the person on 1 st January, the application must be signed before 14 th January |
| Examination for the purposes of medical recommendation for application | No more than 5 clear days must have elapsed between the days on which separate examinations took place (where relevant) | If the first doctor examined the person on 1 st January, the second doctor's examination must take place on or before 7 th January |
| Medical recommendations in support of applications | Must be signed on or before the date of application | If the application is signed by the nearest relative or AMHP at noon on 1 st January, the medical recommendations must be signed by the doctors concerned before midnight on that day |
| Application forwarded to the relevant LSSA with a copy to the MHA (Mental Health Act) Administration at Charlton Lane Hospital or Wotton Lawn Hospital at the same time – MHAadministration@nhs.glos.uk | Within the period of 14 days beginning the date on which the person was last examined by a doctor for the purposes of the application | If the person was last examined on 1 st January, the application must reach the LSSA by the end of 14 th January |
| Acceptance into guardianship by LSSA | Within 7 days of receipt by DASS of LSSA | If received on the 14 th of January, the decision will be made by the 21 st January |

Appendix C: Duties and Powers of Private guardians

| Duties | |
|---------------|---|
| 1 | To appoint a registered medical practitioner to act as the person's "nominated medical attendant" who will care for the person's general health and determine whether the criteria are met for renewing or confirming the person's guardianship (where relevant) |
| 2 | To notify the responsible LSSA through the allocated worker of the name and address of the nominated medical attendant that they have appointed |
| 3 | To comply with any directions given to them by the responsible LSSA about the way in which they carry out the role of guardian |
| 4 | To inform the LSSA through the allocated worker of their own address and that of the person when first received into guardianship |
| 5 | To inform the LSSA through the allocated worker of permanent changes to their address or that of the person within 7 days of the change |
| 6 | If they move to another LSSA, to inform that LSSA (which becomes the responsible LSSA) of the change of address and of the name and address of the person and NMA whether or not they have changed, copying this notification to the original LSSA through the allocated worker |
| 7 | To inform the responsible LSSA through the allocated worker as soon as reasonably practicable if the person dies or the guardianship order comes to an end for any reason. |
| 8 | To inform the LSSA through the allocated worker if they wish to resign the role |
| 9 | To inform the LSSA through the allocated worker if for any reason they are unable to fulfil the functions of guardian |

| Powers | |
|---------------|--|
| 1 | To require the person to live at a place specified by the guardian |
| 2 | To require the person to attend at specified places and times for medical treatment, occupation, education or training |
| 3 | To require access to be given at any place where the person is residing to any registered medical practitioner, AMHP or other specified person |
| 4 | To "take into custody" and return a person subject to guardianship who is absent without leave from the place where they are required to be |

Appendix D: LSSA responsibilities to person subject to guardianships, private guardians and nearest relative

| Responsibilities to the person subject to guardianship | |
|---|---|
| 1 | To allocate a qualified worker or nominated guardian throughout the duration for which the LSSA is the responsible authority for the guardianship |
| 2 | To arrange visits to the person subject to guardianship at intervals of no more than 3 months |
| 3 | To arrange at least one visit a year by a doctor |
| 4 | To arrange visits to person subject to guardianships who are in care homes or hospital, “as would be expected to be taken by their parents”. To be considered in line with LSSA duties within the Care Act 2014 and local policy. |
| 5 | To ensure that the person subject to guardianship is informed of their right of appeal to a Mental Health Review Tribunal and right of access to an Independent Mental Health Advocate (IMHA) |
| 6 | To make a referral to a Mental Health Review Tribunal on behalf of the person if they do not make their own appeal. |

| Responsibilities to the private guardian | |
|---|---|
| 1 | To provide the name and address of the allocated worker nominated to receive information on behalf of the LSSA |
| 2 | To advise the guardian of the duties and powers of a guardian |
| 3 | To communicate the LSSA's requirements regarding the guardianship - (e.g. maintaining as much independence as possible) |
| 4 | To be available to advise and assist on procedures and with the completion of any documents connected, for example with the guardianship application, order, renewal, amendments to the requirements of the order, transfers to and from hospital and transfers of LSSA and/or guardian |
| 5 | To advise and assist on the consideration of safe conveyance if the person subject to guardianship is absent without leave from the place where they are required to live |

| Responsibilities to the nearest relative | |
|---|---|
| 1 | To ensure that the nearest relative where practicable is aware of their rights with respect to discharging the guardianship; that they are consulted on and informed of any changes in the requirements of the guardianship - and that when implemented they are advised about the role of the IMHA |

Appendix E: Front sheet pro-forma for Guardianship Renewal Report

Address of Author

Renewal of Section 7 Guardianship Report

Name:

Date of Birth:Address:

Date of Original guardianship:Nearest Relative:
Guardian:

RC/NMA:

G.P:

MHA (Mental Health Act) Administration : Allocated Worker (i.e. Author):Date of Report

Appendix F Guidance: Guardianship under Section 37 of the Mental Health Act 1983 / 2007

Section 37 empowers a Crown Court or magistrates court to make a hospital or guardianship order as an alternative to penal disposal for offenders who are found to be suffering from mental disorder at the time of sentencing such as to warrant their detention in hospital or reception into guardianship (Jones 2012:227)

Section 37 (1) states that “Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a magistrates’ court of an offence punishable on summary conviction with imprisonment, and the conditions of subsection (2) below are satisfied, the court mayplace him under the guardianship of a local social services authority as may be so specified”.

When a person is subject to a hospital or guardianship order under s37, any previous application/order made in respect of that person ceases to have effect (s40(5)) (Jones 2012:227)

There are no standard forms for the provision of medical evidence, agreement to act by a private guardian or approval by the LSSA. Additionally, the process can be particularly complex due to the potential need for the resources necessary to implement the requirements of guardianship order and the court hearings to synchronise. Section 39A of the MHA states that “Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate –

to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and

if so to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2)”, (which are the same as for Section 7 guardianship).

The Code of Practice Chapter 33:7 identifies that “Local Authorities should appoint a named person to respond to requests from the courts about mental health services available in the community including guardianship”. In Gloucestershire, the GHC Criminal Justice Liaison Service alerts the LSSA AMHP service, (through the AMHP HUB) to offenders for whom the use of the MHA could be appropriate. Alternatively, the assessing doctor who identifies that the grounds for a possible guardianship order are met, may refer the person subject to guardianship, as described below.

| Section 37 Guardianship Order | | | | |
|--|---|---|--|--|
| May be made by: | A Magistrates' Court or the Crown Court | | | |
| In respect of a person who is aged 16 years or over and who is... | Where made by the Magistrates' Court | Where made by the Crown Court | | |
| | <p>a) Convicted by that court of an offence punishable (in the case of an adult) on summary conviction with imprisonment</p> <p>Or</p> <p>b) Charged before (but not convicted by) that court with such an offence who would, if convicted, be liable to be given a guardianship order, if the court is satisfied that the person did the act or omission charged</p> | Convicted before that court for an offence punishable with imprisonment (other than murder) | | |
| <p>It is therefore important that the magistrates give consideration to whether the person appearing before them has a mental disorder of a nature or degree which should be taken into account when considering what powers to use. It would be necessary for the court to request the opinion of a Section 12 doctor with respect to the presence of mental disorder, the nature and degree of that disorder and, on occasions, whether the defendant lacks capacity and/or is not fit to stand trial.</p> | | | | |
| <p>If the magistrates are satisfied that the person with mental disorder did the act or omission with which they are charged, the court can consider making a guardianship order without convicting the defendant but on being satisfied that the defendant did the act.</p> | | | | |
| Under Section 37(2) if the court wishes to consider a guardianship order, it must: | <p>Be "satisfied, on the written or oral evidence of two registered medical practitioners", (at least one of whom must be approved under Section 12 of the MHA), stating that the defendant is "suffering from a mental disorder of a nature or degree which warrants his reception into guardianship" under this Act</p> | | | |
| <p>If the doctors giving evidence wish to recommend guardianship, they should consult the LSSA for the home area. For person subject to guardianships considered ordinarily resident in Gloucestershire, this will be by referring to the relevant GHC team manager for adults of working age or the Gloucestershire County Council's Customer Service Helpdesk for person subject to guardianships with a learning disability, older people or young people aged between 16 and 18 years. This will result in a qualified worker being urgently allocated to the case. As consideration has to be given to the same matters as a Section 7 guardianship, the AMHP HUB should be contacted at the earliest opportunity and an AMHP identified to work with the allocated worker.</p> | | | | |
| <p>Similarly a Guardianship Hearing should (as in 7.2.1 above) confirm that the grounds for guardianship are met, namely that:</p> <p>the person subject to guardianship is suffering from mental disorder of a nature or degree which warrants their reception into guardianship (Note: mental disorder does not</p> | | | | |

include learning disability unless associated with abnormally aggressive or seriously irresponsible behaviour)

it is necessary in the interests of the welfare of the person subject to guardianship or the protection of others that the person subject to guardianship is accepted into guardianship **and**

determine who should be the guardian

decide whether a Responsible Clinician (RC) or Nominated Medical Attendant(NMA) should have continued involvement

consider an initial draft care plan, addressing any funding issues through the usual panel procedures

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consider an initial draft care plan, addressing any funding issues through the usual panel procedures

The allocated worker will send a copy of the AMHP report, the draft care plan and statement by the proposed private guardian (if necessary; see below) to the Director of the LSSA, enclosing draft pro-forma for completion on appropriately headed and addressed paper as follows:

Mental Health Act Section 37

I am willing to accept into guardianship _____ (name of the person subject to guardianship) on the order of _____ Court (sentencing court) following the advice of two doctors one of whom is Section 12 approved

Signed: _____ Date:

(Director of the LSSA)

On behalf of Gloucestershire County Council Local Social Services Authority.

The allocated worker should arrange to receive the notification of acceptance. This notification and statement (if necessary) should be forwarded by them to the court

If a private guardian is proposed, their willingness to act and their approval by the LSSA should be documented as follows:

Proposed Private guardian – Willingness to Act: (Name) _____

Of (Address) _____

Am willing to act as the Guardian of (Name of person subject to guardianship) _____

in accordance with the Mental Health Act 1983 as amended by the Mental Health Act 2007

Signed: _____ Date: _____

Approved by:

Signed: _____ Date: _____

On behalf of Gloucestershire County Council

The allocated worker should liaise with the court regarding the date on which the court will make its decision, in order that, if there is a potential requirement for the person subject to guardianship to live at a particular address, any placement, funding and conveyance issues are addressed.

If the potential guardian will require the person to live at a specific address, this should be put in writing along the following lines:

I _____ (name of the proposed guardian)
of _____ (address of the guardian)

being the guardian approved by Gloucestershire County Council / the allocated worker for Gloucestershire County Council / do direct that _____ (name of the person subject to guardianship) who was made subject to an order under Section 37 of the Mental Health Act at _____ (name of the court) on _____ (date of the order) do reside at _____ (address for the accommodation) from _____ (date)

Signed: _____ (Signature of the private guardian or person acting on behalf of the LSSA)
Date: _____

This document would be given to the person subject to Guardianship

| | |
|---|--|
| Under Section 37 (2b): on receipt of the medical evidence and the information from the LSSA, the court will: | Have "regard to all the circumstances including the nature of the offence and the character of the antecedents of the offender, and to the other available methods of dealing with him (/her)" before deciding if guardianship is "the most suitable method of disposing of the case by means of an order under this Section". |
|---|--|

If a guardianship order is made, the court will issue a guardianship order, which includes the name of the person subject to guardianship, the guardian and the LSSA. This should be copied for the health and social care file(s) and the original forwarded to the Mental Health Act administrators as above. If the person subject to guardianship who is subject to the order is required to go to a particular address, arrangements should be in place to take him/her there.

Section 18 (7) provides a power to convey the offender to the place where they are required to reside.

The person now subject to guardianship should be advised of this verbally and in writing as soon as possible. S/he should be provided with information in the same way as those detained in hospital. In hospital, ward staff would take responsibility for this soon after admission. In the case of guardianship, it will be the allocated worker's duty to ensure this is done, taking advice from his / her AMHP colleague as necessary. The information will normally include an information leaflet giving details of their rights (which includes a right of appeal to the court against being held under guardianship as well as the right of appeal to the Mental Health Review Tribunal), a copy of the guardianship order, the care plan with, essentially, details of the guardian, nearest relative, allocated worker, RC/NMA and the requirements of the guardianship order. The private guardian, nearest relative (if practicable), RC/NMA and GP should also receive the same information from the allocated worker, and this should be recorded on the case file used by the allocated worker.

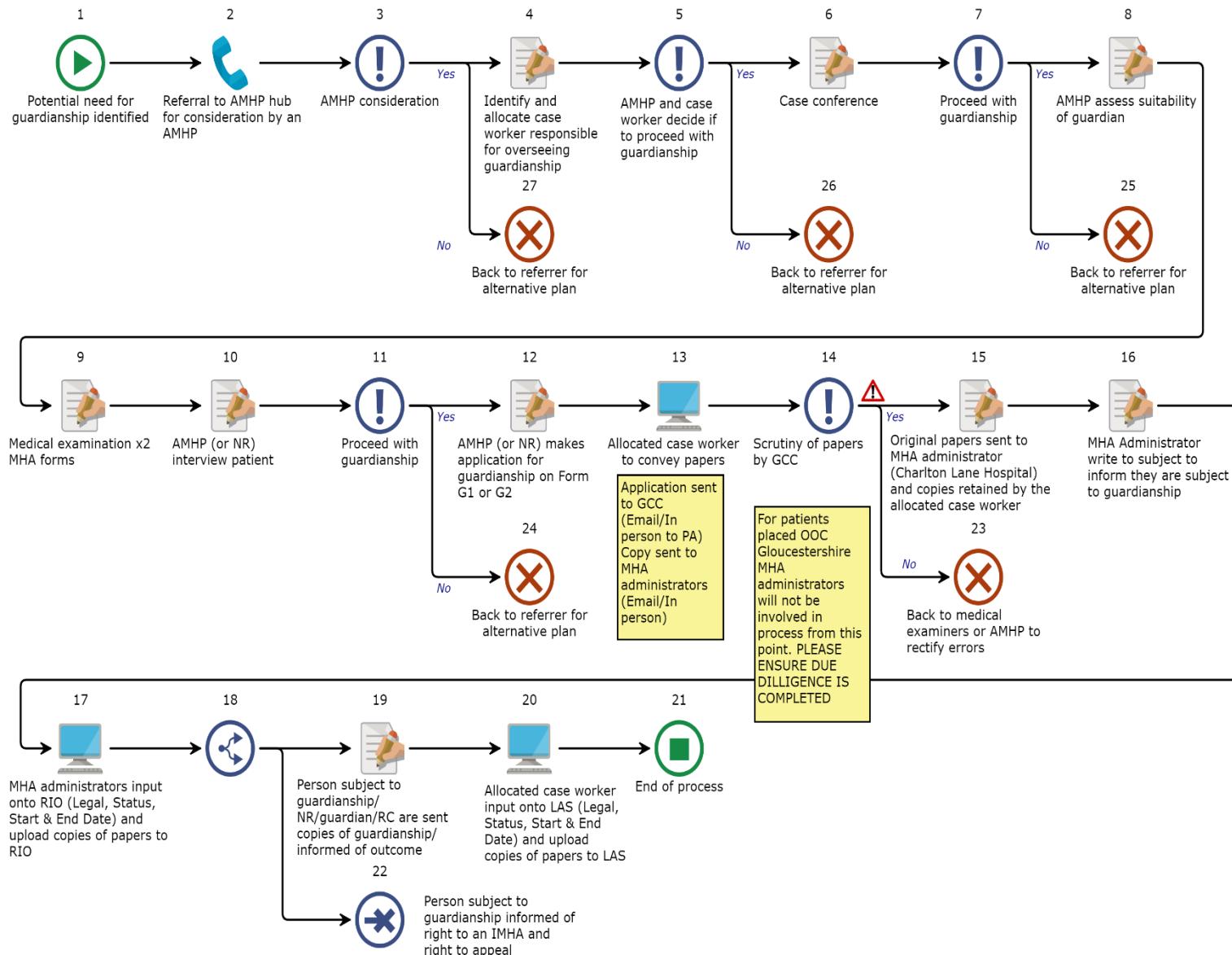
Note: The nearest relative does not have the right to request discharge of the order but does have the right to apply to the Mental Health Review tribunal (CoP Chapter 30: 39).

A Section 37 guardianship order is considered for renewal in the same way as Section 7 guardianship (See part 7.5 of the guidance).

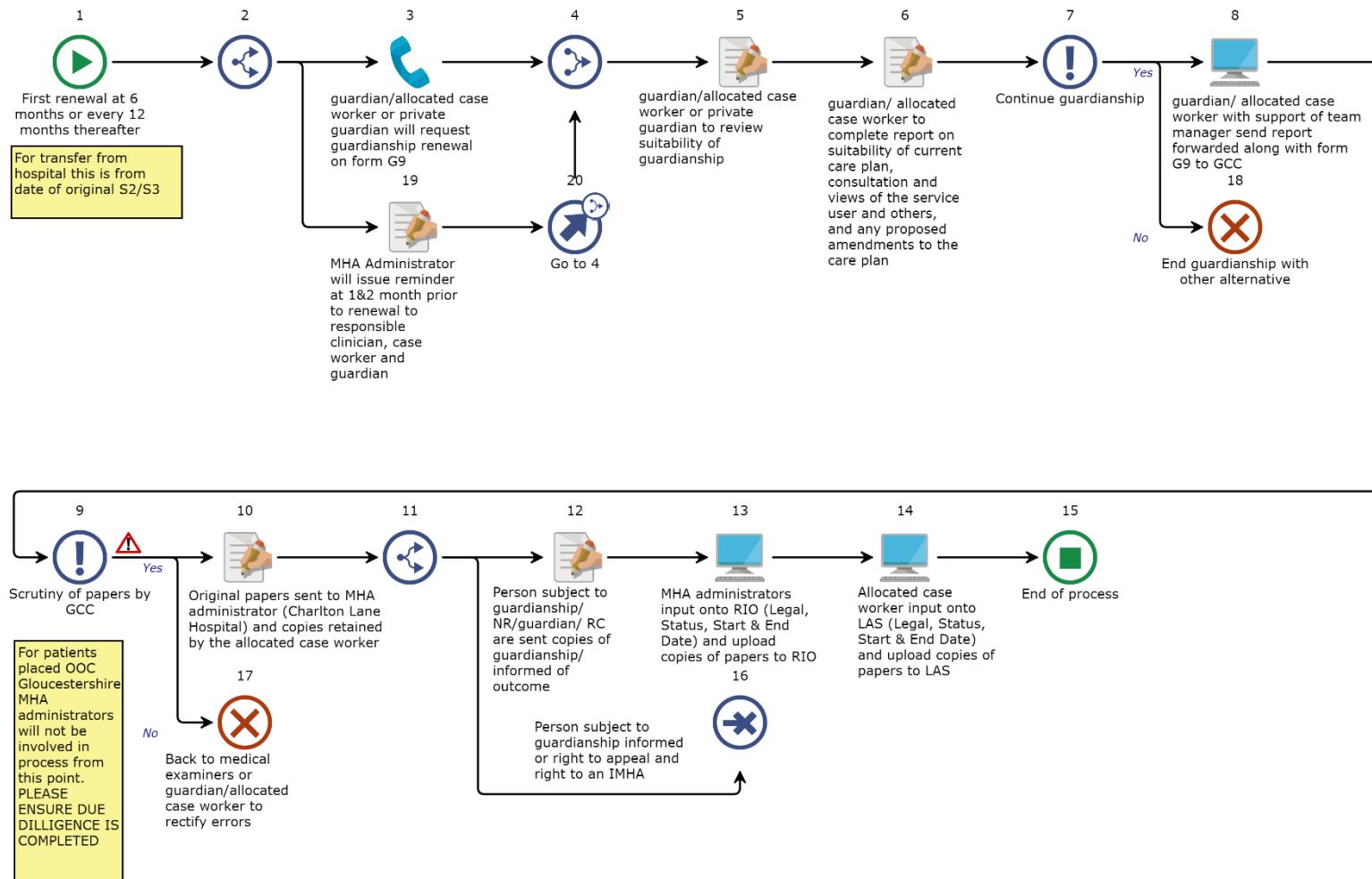
As with Section 7 guardianship, if the patient lacks capacity and they have been required to live at a particular address / care home under guardianship, continued consideration will need to be given to whether the care plan constitutes restriction of movement or deprivation of liberty.

If the patient is absent without leave from the place where they are required to stay, the

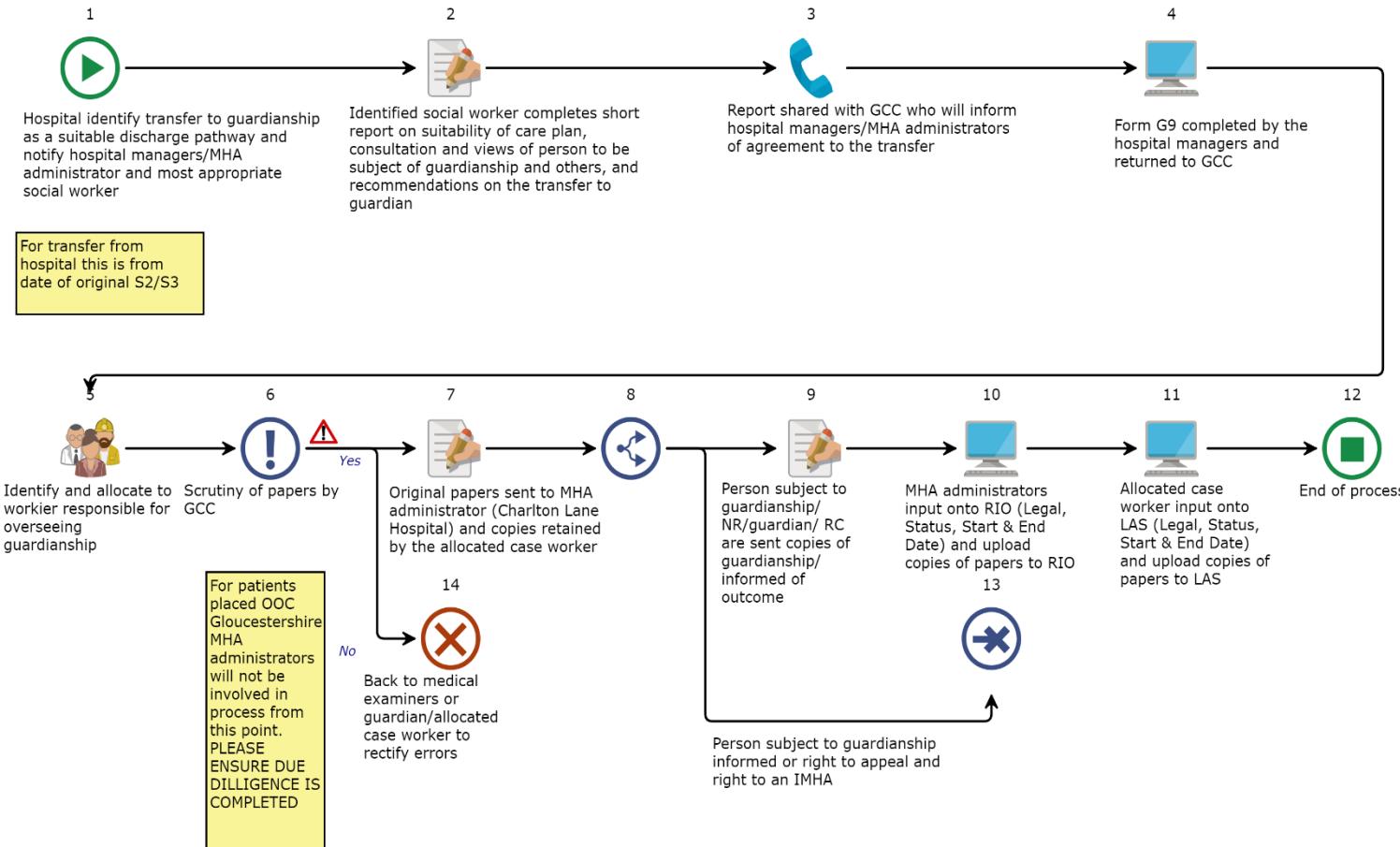
Appendix G: (a) Flowchart: New guardianship



Appendix G: (b) Flowchart: guardianship Renewal



Appendix G: (c) Flowchart: Transfer from Hospital



Appendix H: Guidance checklist on the procedure for guardianship applications

| For person subject to guardianships who are not currently detained under the Mental Health Act | |
|---|---|
| 1. | <p>The Director of the LSSA at Shire Hall, Gloucester will receive:</p> <p>an application for guardianship from an approved mental health professional(AMHP) or nearest relative</p> <p>with two medical recommendations attached</p> <p>an accompanying AMHP report clarifying the consultation and decisionmaking with respect to the application</p> <p>a draft care plan setting out the proposed names for the guardian, nearest relative, allocated worker on behalf of the LSSA, RC/NMA, and the proposed requirements of the guardianship order</p> <p>A copy should be sent to the MHA (Mental Health Act) Administration at Charlton Lane Hospitalat the same time – MHAadministration@nhs.glos.uk</p> |
| 2. | <p>The Director of the LSSA will check the application with the AMHP and/ or nearest relative to ensure that:</p> <p>the applicant has seen, completed the application and forwarded it to the Director within 14 days from the day on which the person subject to guardianship was last examinedby one of the recommending doctors</p> <p>if there are separate medical recommendations, no more than 5 clear dayshave elapsed between the first and last examinations</p> <p>the application and medical recommendations relate to the same person subject to guardianship</p> <p>the application and medical recommendations are signed by people who arequalified to do so</p> <p>the guardian is specified, and if a private guardian, they have signed to statethat they are willing to act as guardian</p> <p>Accept or reject the application within 7 working days.</p> <p>If any of the above conditions are not met, a new application would have to be made.</p> |
| 3. | <p>When the guardianship application is approved, it has been agreed that all original Mental Health Act documents, a copy of the AMHP report and of the care plan should be forwarded immediately or by the third working day after acceptance at the latest to the Mental Health Act administrators at Charlton Lane Centre, Charlton Lane, Cheltenham, GL53 0DZ Phone: 01242 634135. This will enable formal scrutiny of the medical recommendations and application and for any further errors of a rectifiable nature to take place within the 14 days allowed from the date of the order. The document(s) containing errors will be sent to the signatory for amendment and returned to the MHA administrators to be scrutinised again before endorsement by those authorised by the LSSA to do so. The Mental Health Act administrators will ensure copies and legal status are updated on the person subject to guardianship's health record.</p> |
| 4 | A suitably qualified worker is allocated to fulfil the LSSA's statutory duties regardingthe person subject to guardianship, nearest relative and private guardian when agreed by the LSSA (as described in Appendix D) |
| 5 | The allocated worker will make an automatic referral to the local IMHA service unless the person subject to guardianship makes a capacitated refusal of this service |
| 6a | The allocated worker will support the consideration of discharge of the guardianship – whenever the RC/NMA completes a renewal authority on Form 9 and will provide a report for the Director of the LSSA. |

| | |
|-----------|--|
| 6b | The allocated worker will ensure that, following consideration of any matter with respect to guardianship by the Director of the LSSA, the original MHA documents and copies of reports from themselves and a private guardian if appointed, are sent in accordance with above guidance to the appropriate MHA administrator for scrutiny and future action as necessary |
| 7 | The allocated worker will ensure that LAS is updated with the correct start date/expiry of the guardianship, legal status, allocated worker/guardian name (both if different), and all copied of the forms/reports. |
| 7 | Gloucestershire County Council and GHC will audit the effectiveness of receipt and scrutiny of documents on an annual basis. (CoP Chapter 35.20 requires this to be done on a “regular basis”). |