Cumbria County Council and Cumbria Partnership NHS Foundation Trust Guardianship Policy, Procedures and Guidance under Section 7 of the Mental Health Act as amended by the Mental Health Act 2007 with supplementary Guidance on Section 37 Guardianship.

1. Policy Statement

The Mental Health Act 1983 has been 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 was implemented on 3rd November 2008 and provides guidance on the statutory forms and procedures to be used within the context of Guardianship. The Mental Health Act Code of Practice 2008 requires the Local Social Services Authority (LSSA) to "prepare a checklist for the guidance of those delegated to receive guardianship applications on their behalf" (CoP Chapter: 13.15), "for the action to be taken when they" (the LSSA) "or the private guardian become aware that a guardianship patient is absent without leave (AWOL) from the place where they are required to live" (CoP Chapter: 22.12) and to "have a policy setting out the arrangements for the way in which it will discharge its responsibilities in relation to guardianship". (Chapter: 26.15).

2. Purpose

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 Approved Mental Health Professionals (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.
- To identify the procedures relating to receipt of the application, renewal and discharge documentation.
- To enable those with responsibilities associated with Guardianship to fulfil those duties in line with the MHA, Code of Practice and Regulations.
- This document includes summary and interpretation of the law and regulations. It does not replace the requirement to consult and/or source legal and advisory material including the Act; the Code of Practice; the Reference Guide to the Mental Health Act; The Mental Capacity Act; current Jones Manuals and case law. Below are links to Department of Health publications:-

http://www.dh.gov.uk/en/Healthcare/Mentalhealth/DH_089882

http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/index.htm

3. Scope

The policy is relevant for all AMHPs; qualified and registered staff of Cumbria County Council (CCC) and Cumbria Partnership NHS Foundation Trust (CPFT) who could be required to act as a Guardian on behalf of the LSSA or to fulfil LSSA duties towards a private Guardian; staff who could be required to consider applications for Guardianship and the delivery of services related to Guardianship; and staff of the LSSA records and CPFT Mental Health Act administrators who process the documentation.

4. Definitions and Abbreviations

Guardianship Patient:	A person who is subject to Guardianship under the Mental Health Act 1983, as amended by the Mental Health Act 2007.
MHA / the Act	Mental Health Act 1983, as amended by the Mental Health Act 2007
CoP:	Code of Practice Mental Health Act 1983
Private Guardian – The Regulations:	The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008
Relevant Hospital:	The hospital at which a patient is detained
AMHP:	Approved Mental Health Professional
RC:	Responsible Clinician
NMA:	Nominated Medical Attendant
LSSA:	Local Social Services Authority – Cumbria County Council
CPFT:	Cumbria Partnership NHS Foundation Trust
IMHA:	Independent Mental Health Advocate
Allocated Worker:	From the team responsible for care management of the case.

5. Legal Context

Sections 7 – 10 of the Mental Health Act 1983 / 2007 set out the legal framework for applications for Guardianship, its effects, regulations and transfer of Guardian.
Section 18(3) gives power to take a guardianship patient into custody where they are AWOL (absent without leave).
Section 18(7) gives power to take a guardianship patient to a place where they are required to reside if they have not yet complied with that requirement.
Section 19 sets out regulations for transfer into Guardianship from detention in hospital under the Act.
Section 20 sets out the framework for renewal or expiry of the Guardianship order.
Section 21, 21A and 21B considers the arrangements for patients who are absent without leave (AWOL) from the place where they are required to live
Section 23 sets out the process for discharge from the Guardianship order

The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 No 1184 sets out the requirements for: procedures for and acceptance of 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 patient is received into Guardianship (15).

- The LSSA is required to arrange for AMHPs to consider a case on their behalf if they believe that a Guardianship application may need to be made with respect to a patient within their area.
- Guardianship can be considered for people of 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 19.
- If the Guardian is not the LSSA, an AMHP can apply to the county court if the Guardian has performed their functions negligently or in a manner contrary to the interests of the welfare of the patient. The court can order that the Guardianship is transferred to the LSSA (Section 10.3)
- The AMHP may make an application outside the area of the LSSA on whose behalf they are acting e.g. if the patient is temporarily accommodated outside their home area in England or Wales.

5.1. The Purpose of Guardianship

a) The Code of Practice (Chapter 26.2) states that 'the purpose of guardianship is to enable patients to receive care outside hospital when it cannot be provided without the use of compulsory powers"; (CoP: 26.4) "It 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 must be part of the patient's overall care plan."

b) The Code also states (26.33) 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".

5.2. The Powers of the Guardian; Section 8

A Guardian has the power to:

a) 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. (CoP 26.3).
b) Convey 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. (CoP 26.27)
c) 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 (CoP 26.26 and 26. 29)

d) Require the patient to attend specified places at specified times for medical treatment, occupation, education or training (CoP 26.3) but not make them accept treatment
e) Require the patient to be seen at the place where s/he is living by a doctor, AMHP or other relevant person specified by the Guardian. (CoP 26.3)
f) Restrict a patient's liberty but not to deprive them of their liberty.

6. Mandatory procedures

The Code of Practice 26.7- 26.14 requires the AMHP to assess and consider whether:

- the grounds for Guardianship are met (s7.2)
- the patient being subject to Guardianship is likely to respond to the authority of the Guardian to enable delivery of the care plan
- the authority of a Guardianship order is the least restrictive way of responding to the patient's needs and would be beneficial
- the use of the Mental Capacity Act 2005 and consideration of a Deprivation of Liberty authorisation would be more appropriate if the patient lacks capacity to make some or all of the important decisions regarding their welfare
- it is important for a single person or authority to make decisions regarding where the patient should live
- it is necessary for there to be an explicit statutory authority for the patient to be returned to the place where they should live if they go absent
- it is clear that the power of recall to hospital is not needed
- the nearest relative wishes to object to the Guardianship order

7. Practice Guidance

CPFT's Director of Operations has overall responsibility for ensuring compliance with the policy through the monitoring of CPFT service performance.

Corporate Director of Adult and Local Services has overall responsibility for ensuring compliance with the policy through the monitoring of LSSA performance.

Health/Social Care Professionals A service user, who is being considered for Guardianship, could be the responsibility of a range of different teams, including Adult CMHT; Older Adult CMHT; Learning Disability Team; Assertive Outreach Team; Physical Disability Team; Early Intervention in Psychosis Team.

Approved Mental Health Professionals (AMHP) have responsibility for the undertaking of guardianship work out with the County AMHP service.

CMHT Team Manager are responsible for allocating cases for Guardianship promptly to an AMHP.

County AMHP Shift Coordinator is responsible for providing initial advice prior to a referral being made - **01228 515753**.

7.1 Allocation and Assessment

Referrals should therefore be made directly to the relevant area CMHT Team Manager, who will allocate the case accordingly. This keeps the referral process succinct and avoids any delays or confusion.

Initial advice prior to a referral being made can be sought from the County AMHP Shift Coordinator on 01228 515753 as necessary.

a) When Guardianship is suggested as the next course of action, the principal of proceeding in this way and the processes involved should be discussed with the Team Manager of the service user's allocated worker. A referral should then be made to the local Social Services Customer Services, who will then pass the referral information to the Shift Coordinator from the County AMHP team. The Shift Coordinator will consider the appropriateness of the referral, therefore acting as gatekeeper. If it is deemed appropriate, the Shift Coordinator will then contact the appropriate Adults CMHT Team Manager who will allocate an AMHP operating within their specific geographical area, it as a set piece of case work.

It is envisaged that in due course, AMHPs will be trained in sufficient numbers to ensure there will be AMHPs based in every team.

b) The allocated worker and AMHP must discuss the case between them and with others involved in order to confirm that Guardianship may be an appropriate course of action. Key in this will be the views of the Nearest Relative, who will have the right to object.

c) 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 CMHT Manager.

d) If the worker and/or AMHP agree that no less restrictive or more appropriate alternatives are available, a case conference should be arranged as set out within paragraph 7.2 below.

7.2 Case Conference

7.2.1 The conference should:

a) Be convened by the allocated worker who is responsible for the Care Plan (Disability for disability clients, Older Adults for older adults, Mental Health for mental health clients etc.).

That allocated worker's Team Manager or Deputy will chair the conference. **N.B.** The attending AMHP must be clear about their role, and must ensure that all areas of the law relating to the Mental Health Act are covered – it is not acceptable for the AMHP to rely on the chair person.

Team secretarial support from the host team will be required to take minutes.

Those invited to attend the conference should include the allocated worker and AMHP; GP; psychiatrist; service user; nearest relative; other involved members of the care team; prospective guardian(s); together with family, friends and others who are significant in the health and welfare of the subject of the meeting.

The allocated worker from the host team should consider if there is a need for an interpreter or advocate.

If the service user lacks capacity to make decisions relating to Guardianship, is there an appointed deputy or attorney who should be invited?

Exceptionally, after serious consideration, a person may be excluded from invitation to the conference, but an alternative should be offered to ensure all relevant views have been considered.

Legal Advisors would not be expected as a matter of course to attend Guardianship Meetings - however the legal advisor can be contacted prior and during Guardianship meeting if required. In some instances, legal advisors will attend non-routine complex conferences to offer independent advice to Adult Social Care.

b) Consider a written social circumstances report and draft care plan prepared by the allocated worker from the host team, outlining relevant history leading to the care plan, including anticipated difficulties that may be addressed by use of Guardianship. Note – any related funding issues associated with the proposed care plan should be addressed by the host team through their usual procedures – there is no separate budget for Guardianship.

c) Consider an addendum to the social circumstances report prepared by the AMHP which will outline their consultation, refer to relevant law and guidance and give a view on the appropriateness of Guardianship. The AMHP should check that there is no potential conflict of interest between the assessors, patient and nearest relative.

d) Confirm that the grounds for Guardianship are met, namely that the patient is suffering from mental disorder of a nature and degree which warrants their reception into guardianship (N.B. mental disorder does not include learning disability unless associated with abnormally aggressive or seriously irresponsible behaviour); and it is necessary, in the interests of the welfare of the patient or the protection of others, that the patient is accepted into Guardianship.

e) Determine who should be the Guardian, usually the **Corporate Director of Adult and Local Services** and the delegated responsible worker

f) Decide who is the most appropriate to have continued involvement - a Responsible Clinician (RC) or Nominated Medical Attendant (NMA), to ensure appropriate follow up and review.

7.2.2 Suggested Agenda for Guardianship Meetings

1) Introductions and purpose of the meeting and explanation of Guardianship.

2) Brief history, including details of social circumstances report which will have been completed by the allocated qualified worker and will include what circumstances have led to the need to consider Guardianship, current care needs, views of the service user and those of the Nearest Relative and views of carers or any other significant others. It is good practice for the report should be shared with the AMHP who will ensure the powers required are specified and form an integral and essential part of the Care Plan.

3) Medical Opinions [are two medical recommendations being made available or does a person authorised by hospital managers agrees to transfer from detention in hospital?]

4) Does the AMHP MH1 report show they have consulted with the Nearest Relative and whether there have been any objections?

5) Is the AMHP or Nearest Relative willing to make the application?

6) Are the Grounds of Guardianship met /is mental Capacity Act relevant? Is there a less restrictive alternative?

7) Draft Care Plan Consideration (is the Care package available?) Funding and placement should be made available before application is made.

8) Clarification of which specific Guardianship powers are to be used and how the Guardian will exercise them.

9) Who should be the Guardian?

10) Clarification of a Community RC/NMA.

11) Record dates of expected 3 monthly visits by the Local Authority worker acting as the Guardian to the person under guardianship.

12) Record the proposed date for the review, in the last two months of each period of Guardianship, to be attended by S.12 Approved Doctor who would be if appropriate able to renew the Order at this time.

13) Future case responsibility/allocation.

14) Care plan and Guardianship review plans.

15) Chair to confirm to the conference whether recommendation will be made to Local Authority by the AMHP.

16) Explanation of the Duration of the Guardianship and renewal process.

17) AMHP explains to the Patient their right of appeal.

18) AMHP explains to the Nearest Relative their right to discharge.

19) AMHP explains to the meeting it is not good practice to allow the Guardianship to lapse. The allocated worker should initiate a prompt review if the requirements are no longer appropriate where discharge can be actively considered.

7.3.1 The **Application – if the patient is <u>NOT</u> detained in hospital.**

a) 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). One recommendation should be provided by a Section12 MHA1983 approved doctor. The other recommendation should be provided by a doctor with "previous acquaintance". If this is not possible, then this doctor should ideally also be Section 12 approved.

b) The AMHP formally considers the suitability of the proposed Guardian before proceeding further.

c) The applicant, whether the AMHP or the nearest relative, must interview the service user within 14 days of the last medical examination.

d) Having made an independent assessment of the patient, either the Nearest Relative (Form G1, Part 1) or the AMHP (Form G2, Part 1) makes an application under Section 7 on the basis of the two medical recommendations.

e) If the proposed Guardian is not the local Social Services Authority, the AMHP obtains a statement (on Part 2 of the respective forms mentioned in point 7.3.1(d)) from the prospective private guardian, stating that they are willing to act as such.

f) The AMHP will always prepare a report MH1 (regardless of who makes the application) based on the Social Circumstance Report, addressing the justification of the care plan and giving consideration to alternatives.

g) The Guardianship application must be completed, signed by the AMHP (or Nearest Relative) and forwarded, together with the medical recommendations; the minutes of the conference; the Social Circumstance Report prepared by the allocated worker, with the AMHPs MH1; and the comprehensive care plan (including the name of the Guardian; Nearest Relative; RC/NMA; allocated worker; and the requirements of the Guardianship Order) to the nominated representative of the responsible Local Social Services Authority, within 14 days of the date on which the patient was last examined by a doctor for the purposes of the application. **(See Appendix G).**

If the application is accepted, Form G5 is completed by a nominated representative **(see Appendix I)** of the Local Social Service Authority, indicating the date on which the application is accepted.

N.B. A list of those staff, and their contact details, who hold nominated responsibility to receive Guardianship Orders, can be found in **Appendix I**. These staff will be the decision makers as to whether or not the Order will be received and the AMHP making the application must clearly outline their reasons for the application.

If the application is flawed in a way which means that the application cannot be accepted, the same medical recommendations can be used if it is possible to rectify the errors and reapply within the 14 days from the last medical examination.

g) If the LSSA is to be the Guardian, an individual (sometimes an AMHP but more usually the allocated worker from the host team) 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 patient, and to liaise with and assist the Guardian.

h) Enter the application onto the care record showing the start date of the Guardianship Order as the date on which the application is accepted, as stated on form G5.

Set the review date as the date of expiry of the order.

If the LSSA is the Guardian, ensure that the member of staff identified to act as the Guardian is entered on to the care record.

If a private Guardian has been accepted by the LSSA, ensure that a member of staff is allocated on the care record to fulfil the statutory duties towards the patient and the Guardian.

7.3.2 The application – if the patient IS already detained in hospital.

a) If the patient is being transferred from detention in hospital, the managers of the relevant hospital provide the authority for transfer under Section 19(4)(a), using Part 1 of Form G6.

If the patient is to be transferred from an independent hospital, the NHS body which has contracted with the independent hospital should authorise the transfer.

b) The minutes of the conference and the comprehensive care plan (including the name of the Guardian; Nearest Relative; RC/NMA; allocated worker; and the requirements of the Guardianship Order) should be made available to the nominated representative of the responsible Local Social Services Authority for their consideration **(See Appendix I).**

c) If the transfer into Guardianship is agreed, Form G6 should be completed, with the date on which transfer was agreed with the LSSA; and the date on which the transfer is to take place. The date should predate the expiry of the period of detention.

The transfer into Guardianship has the effect of the patient being treated as if the application for detention was an application for Guardianship (i.e. the date for renewal would run from the start date of the original Section).

N.B. A list of those staff, and their contact details, who hold nominated responsibility to receive Guardianship Orders, can be found in **Appendix I**. These staff will be the decision makers as to whether or not the Order will be received and the AMHP making the application must outline their reasons for the application to that person.

If the LSSA is to be the Guardian, an individual (sometimes an AMHP but more usually the allocated worker from the host team) 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 patient, and to liaise with and assist the Guardian.

d) Enter onto the care record the date of transfer into guardianship, as stated on Form G6.

Set the review date as the date of expiry of the order.

If the LSSA is the Guardian, ensure that the member of staff identified to act as the Guardian is entered on to the care record.

If a private Guardian has been accepted by the LSSA, ensure that a member of staff is allocated on the care record to fulfil the statutory duties towards the patient and the Guardian.

7.4 Implementation and Appeal

7.4.1 Implementation

a) The care plan will incorporate the names of the Responsible Clinician/Nominated Medical Attendant; Guardian and allocated worker who will all have ongoing involvement in the subject's care and treatment.

The plan will include a statement identifying which Guardianship powers will be exercised (residence and/or attendance and/or access).

The Guardianship case will remain allocated to a qualified worker throughout **(See Appendix E).**

If the Guardian is the Local Social Services Authority the allocated worker can be from any professional background and does not need to be an AMHP. The same would apply if the Guardian was 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 in the last two months of each period of Guardianship.

A named consultant from the Trust must be identified and retain the case as open.

b) The person now subject to Guardianship should be advised of this verbally by the AMHP, and subsequently in writing as soon as possible by the Mental Health Act Administration Unit in the Cumbria Partnership Trust. They should be provided with information leaflets about their rights by the AMHP.

This information will normally include a leaflet with details of their rights; a copy of form G5 or G6; the care plan with details of the Guardian; nearest relative; allocated worker; their RC/NMA and the requirements of the Guardianship order. They should also be advised of the Independent Mental Health Advocacy (IMHA) Service. The case file(s) should indicate that this has been done.

c) The nearest relative (if practicable), Responsible Clinician (RC) or Nominated Medical Attendant (NMA) and GP should also be advised of the same relevant information by the AMHP.

d) Copies of all the forms, minutes and the comprehensive care plan should be retained in the legal section of the case file and the originals sent to the Mental Health Act administrator (details of which can be found in **Appendix J**) who will arrange for the medical recommendation and application forms to be scrutinized, and will monitor Guardianship orders in terms of dates of review, discharge and expiry.

7.4.2 Appeal

a) The subject of the order will have been told of their right to appeal throughout the implementation of the order; by the AMHP and Mental Health Act administration Unit, and specifically formally at the case conference.

b) They should write formally to the Guardian and Mental Health Act Administration Unit to inform them of their intention to appeal, with the support of their allocated worker if necessary. They should always be encouraged to fully exercise their right of appeal.

c) The Mental Health Act Administrators will then organise a Tribunal with the clerks to the Tribunal Service to take place locally as soon as is practicable. They will request reports from the allocated worker and from the Responsible Clinician and inform them of the time and location of the Tribunal hearing.

d) The subject has the right to free legal representation at the Tribunal. There are specialist solicitors a list of whom can be obtained if requested from the Administrators.

e) It is expected that the allocated worker and responsible clinician attend the Tribunal to supplement their written reports as required. An AMHP should be available for consultation throughout and ensure the reports address the key legal issues particularly why the specified powers are considered necessary. If required an AMHP can be invited to attend the Tribunal.

7.5 Renewal

a) An order lasts for 6 months, renewable for 6 months initially and then every 12 months. These periods run from the date of reception into guardianship. Mental Health Act administrators 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.

b) Two months before expiry of the order, the LSSA Guardian / allocated worker or private Guardian will request a form G9 report from the service user's RC or NMA. Advice may be sought from an AMHP or the Network Lead Practitioner (AMHP).

c) A review meeting/case conference as in 7.2.1 above will be convened by the allocated worker.

d) The LSSA Guardian/allocated worker, or private Guardian supported as necessary by the allocated worker, will complete a brief report:

- reviewing the appropriateness of the care plan,
- outlining any significant incidents during this period of the Order
- describing the consultation with the service user, nearest relative, RC/NMA (and private Guardian if the report is by the allocated worker) and others involved in care,
- making proposed amendments to the care plan,
- recommending whether the Guardianship order should continue.

The documents prepared by staff acting on behalf of the LSSA should be accompanied by a front sheet (**see Appendix F**).

When private guardians have to make reports, or give information to the LSSA, this may be done in a way which is agreed by the LSSA - including orally or by e-mail in accordance with The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (Part 3, Section 22(2)).

e) Form G9 will be forwarded to the nominated representative of the responsible LSSA with the report(s) by the allocated worker/Guardian and the updated care plan which will include requirements of the Guardianship (residence, attendance and access) for scrutiny and potential acceptance. This process must be concluded before the expiry date of the Guardianship order.

f) Should the order be successfully renewed, the allocated worker, together with his/her 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 forwarded to the Mental Health Act administrator to join the original Guardianship order papers.
- The service user is reminded of their right of appeal (with appropriate leaflet) and of the IMHA service.

g) The care record should be updated. If the Guardianship order 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. Mental Health Act administrators 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 time for consultation and completion of the process.

7.6 Guardianship application to a different LSSA

If a person, who appears to be willing and able to act as a private Guardian for a Cumbria patient lives outside Cumbria, 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 patient is placed in an address in a different LSSA, Cumbria County Council would remain the responsible LSSA unless a transfer is agreed to another authority. The care record and the Mental Health Act administrators should be updated accordingly.

7.7 Transfer from Guardianship to Guardianship

Under paragraph 8(1) of the Regulations a Guardianship patient may be transferred into the Guardianship of another LSSA or person. The patient and nearest relative (where practicable) should be included in consideration of such a change and advised promptly of the decision.

The transfer is achieved by completion of Part 1 of form G7 by the Guardian.

a) If the current Guardian is Cumbria County Council, the **Corporate Director of Adult and Local Services** would be the signatory.

b) If the new Guardian is to be to 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.

c) 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 wants 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.

d) The original forms should be forwarded as required by the authority if other than Cumbria. If Cumbria remains the LSSA, the originals should be sent to the Mental Health Act administrator. Copies of the documents should be placed on the patient's health and social care file(s). The changes should be recorded on the care record.

The allocated worker should expect to support the above processes. The Network Lead Practitioner may be consulted.

7.8 Transfer from Guardianship to hospital

A Guardianship patient may be admitted to hospital, with their Guardianship order remaining in force, for their mental or physical health care as an

informal patient, under Deprivation of Liberty Safeguards or under Sections 2 or 4 of the MHA.

Under Paragraph 8(2) of the Regulations, a Guardianship patient 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. An AMHP will also need to have completed an application using Form A6.

The AMHP would arrange an appointment with the, or a nominated deputy, to **Corporate Director of Adult and Local Services** seek completion of Part 1 of form G8 to agree the transfer.

All forms (A6, A7/8 and G8), with the AMHP Report (MH1), should be made available for consideration. The decision would include scrutiny of the documents and being satisfied that arrangements have been made for the patient 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 Mental Health Act administrator. The changes should be entered on to the care record.

7.9 Patients who are absent without leave

Guardianship patients 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 of the staff of an LSSA, by any constable, or by any person authorised in writing by the LSSA or by the Guardian or an LSSA.

a) A copy of the current Guardianship Order on form G5, G6, G7 or G9 should be made available to the person who will be returning the patient.

b) Consideration should be given to how the patient will be conveyed. If authorisation is needed to support the conveyance of the Guardianship patient 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.

c) Consideration may need to be given regarding whether the patient is being assisted to absent themselves by another person who could be guilty of an offence under section 128 of the MHA

d) Consideration may need to be given to the need to apply for a warrant under Section 135(2) because the power in section 18(3) to take an AWOL guardianship patient into custody does not extend to entering premises if entry is refused.

If the patient returns or is returned after being absent for more than 28 days but still within the duration of the Guardianship order, the RC / NMA must examine the patient within 7 days of the "return" day and complete form G10. If this takes place within the two months of the expiry or 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 Director of the relevant LSSA for signature of receipt.

If the Guardianship patient is absent without leave on the day that or within a week before the date on which the Guardianship order would end and the order has not been renewed, and the patient returns or is "taken into custody" under Section 18 to the place where they are required to be, the order is effectively extended for 7 days from the date of return to allow the renewal report to be prepared.

If they do not return and are not returned under section 18 before the end date of the current Guardianship order, it cannot be renewed.

7.10 Transfer of Guardianship between Wales and England

Where a Guardianship patient is transferred from Guardianship with an English LSSA to Guardianship with a Welsh LSSA, the English Regulations, and forms, apply.

Where a Guardianship patient is transferred from Guardianship with a Welsh LSSA to Guardianship with an English LSSA, the Welsh Regulations, and thereby forms and authority to convey, apply.

7.11 Reception into Guardianship of a patient removed from Scotland, Northern Ireland, the Channel Islands or the Isle of Man to England

The Guardian (in this case the **Corporate Director of Adult and Local Services** or private Guardian) will record on form M1 the date on which the patient arrives at the place at which they are required to reside on their reception into Guardianship. The Guardian should notify the patients nearest relative of the patient'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 send to the Mental Health Act administrator. 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 patient and any permanent change to either address within 7 days of the change. These details should be entered on to the care record along with the name of the allocated worker.

7.12 Discharge

An order for discharge can be made by the RC, be authorised by the LSSA or made by the patient's nearest relative, at any time and without notice. The

nearest relative's order cannot be barred. In the event of this raising concern for the welfare of the service user, further intervention may be required in the form of either displacing the nearest relative, or seeking a welfare decision from the Court of Protection, if the service user lacks capacity. Consultation can be sought from the AMHP.

The order must be in writing to the LSSA. The LSSA can order the discharge of the Guardianship order at any time and must always consider doing so when a report is made for renewal by the RC or NMA.

The decision may be taken on behalf of the Local Authority by three or more members of that authority, or by a committee or subcommittee authorised by the LSSA for the purpose. Under these circumstances, three or more members must agree. This responsibility cannot be delegated in accordance with The Mental Health (Hospital, Guardianship and Treatment) (England) Regulation 2008, 21.2.

The Guardianship order can also be ended by a Tribunal, following an appeal (see section 7.4.2).

The NMA and private Guardian do not have the authority to discharge the patient.

If the patient resists requirements of the order, consider if amendments to the requirements, care plan or Guardian could assist the situation, before seeking to discharge the Guardianship order.

7.13 Emergency Procedure

One of the values of a Guardianship order is that it can be used as an alternative to admission to hospital. Good practice and county policy requires the normal procedure to be followed where possible. However, in an emergency, the following procedure can be used:

a) The applicant must ensure the grounds for the Guardianship are satisfied and that two medical recommendations are provided. These should include at least one from a section 12 doctor and, the other by a doctor with "previous acquaintance". If this is not possible, ideally, another section 12 doctor should be used.

b) The applicant must consult the nearest relative unless it would not be reasonably practical to do so or would involve unreasonable delay.

c) The applicant must consult with Team Manager or deputy of the responsible team to ensure that the care plan is appropriate and deliverable.

d) The papers should be forwarded to the **Corporate Director of Adult and Local Services** or nominated deputies as detailed in paragraph 7.2.2g above. The Out of Hours Team Manager is also vested with the authority to receive a

Guardianship order on behalf of the LSSA. The Guardianship order is effective from date of acceptance on Form G5.

e) If an application is made by a member of the OOH Team the social worker making the application will provide a full written report to the appropriate team.

f) The care record(s) will be updated.

g) A case conference (as in 7.2 above) will be convened within five working days of an emergency application to consider the application in detail and to review the Care Plan.

8. Monitoring and Review

The policy, procedures and guidance will be monitored through the locality and county AMHP forums, and will be reviewed in accordance with procedures for joint CCC and CPFT policies.

Aspect of compliance or effectiveness being monitored	**Monitoring method**	**Individual responsible for the monitoring**	**Frequency of the monitoring activity**	**Group / committee which will receive the findings / monitoring report**	**Group / committee / individual responsible for ensuring that the actions are completed**
The management of Guardianship is in accordance with this policy includes - duties - processes authorised for use within the County	Audit of 6 randomly selected cases of Guardianship	Professional Lead for MH Social Work	Annual	LSSA Governance Group	LSSA's Corporate Director
AMHPs have implemented Guardianship in line with this policy	Audit of data from internal clinical information system(s)	Professional Lead for MH Social Work	Twice Yearly	LSSA Governance Group	LSSA's Corporate Director
Staff have completed training associated with this policy in line with TNA	Compliance with training will be monitored in accordance with CPFT & LSSA Learning and Development Policies				

9. Training

Training required to fulfil this policy will be provided in accordance with the Cumbria County Council Adult & Local Social Care's and Cumbria Partnership

NHS Foundation Trust's Training Needs Analysis'. Management of training will be in accordance with the respective agencies' Learning and Development Policy".

It will be mandatory for all Team Managers, Service Managers and Operational Managers to attend training on Guardianship every 5 years.

All AMHPs receive training on Guardianship within their basic AMHP training and legal updates will be provided as part of AMHP forums and Legal Update training sessions. Training on the policy and procedure will be covered within AMHP forums and supervision. Therefore additional training will not be required for this.

Older Adults and other wider service Team Managers will also have access to legal updates and case law around the issue of guardianship. Responsibility for this lies with the chair of AMHP forums.

10. References

Mental Health Act 1983
Reference guide to the Mental Health Act 1983
Code of Practice, Mental Health Act 1983
The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 No 1184
Mental Health Act Manual 11th Edition: Richard Jones
Mental Capacity Act 2005 Code of Practice
Mental Capacity Act 2005 Deprivation of Liberty Safeguards supplement

Available online via these links.

http://www.dh.gov.uk/en/Healthcare/Mentalhealth/DH_089882

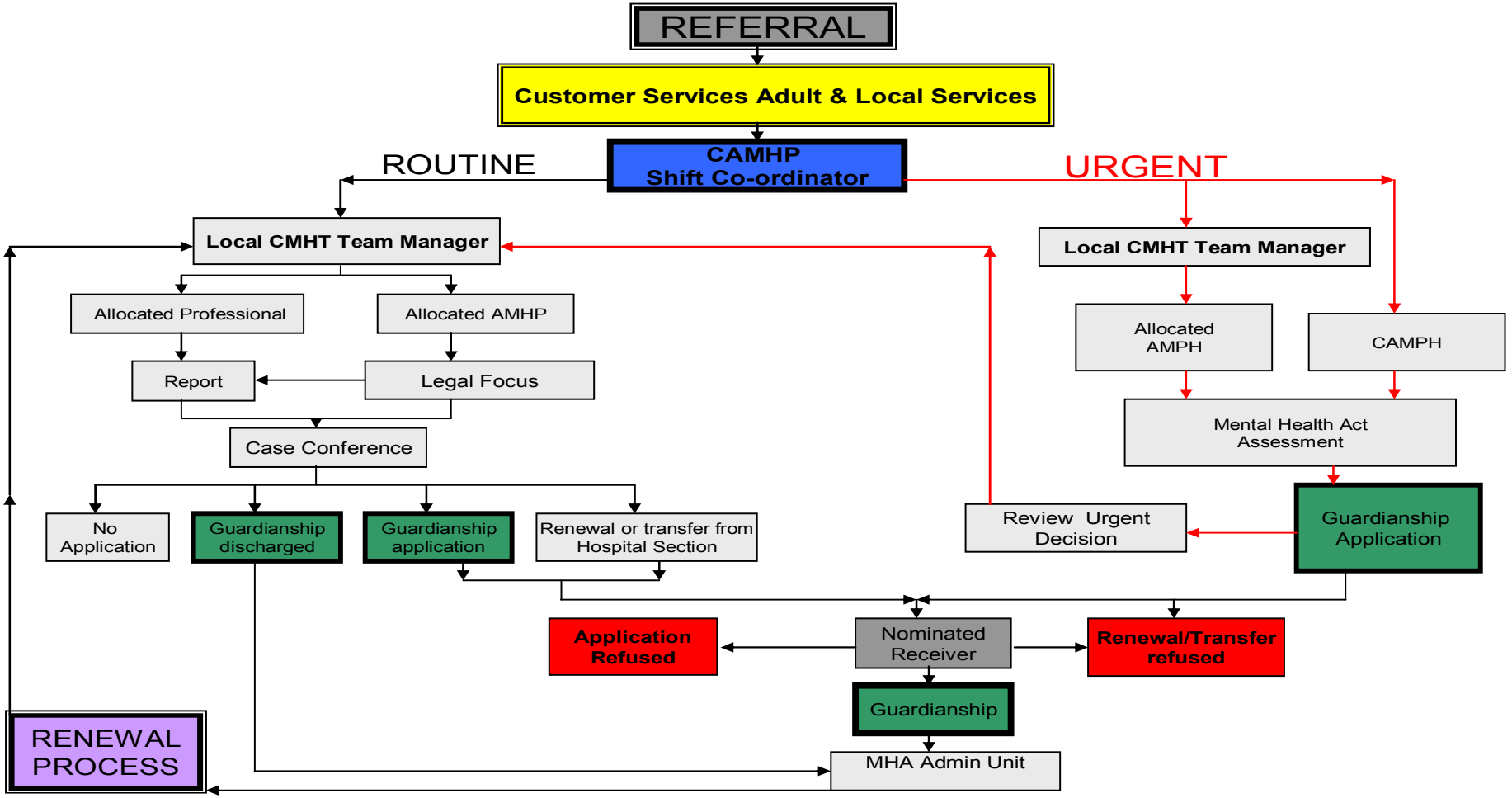
http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/index.htm

Cumbria County Council

Cumbria Partnership NHS
NHS Foundation Trust

Guardianship Referral Flow Chart

APPENDIX A



APPENDIX B

Deciding between Guardianship, Leave of Absence and Supervised Community treatment

A1	There are three ways in which an unrestricted patient may be subject to the powers of the Act while living in the community: guardianship, Leave of absence and SCT
A2	**Guardianship** *(Section 7 of the Act)* is social care-led and is primarily focussed on patients with welfare needs. Its purpose is to enable patients 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 patient detained under the Act to be temporarily absent from hospital where further in-patient treatment as a detained patient is still thought to be necessary. Most suitable for short-term absences, its use is intended to allow visits to family and so on. It may also be useful In the longer term, where the clinical team wish to see how the Patient manages outside hospital before making the decision to discharge. However, for a number of patients, SCT 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 patient (i.e. for more than seven consecutive days), the responsible clinician must first consider whether the patient should be discharge onto SCT instead.
A4	**SCT** (Section 17A) is principally aimed at preventing the "revolving door" scenario for those patients who have a clear diagnosis and are well known to mental health services, and are at risk of harm in the event of relapse. It is a more structured system than leave of absence and has more safeguards for patients. A key feature of SCT is that it is suitable only where there is no reason to think that the patient will need further treatment as a detained in-patient for the time being, but the responsible clinician needs to be able to recall the patient to hospital.

APPENDIX B continued

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

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

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

SCT or guardianship: relevant factors to consider

Factors suggesting guardianship	Factors suggesting SCT
• The focus is on the patient's general welfare, rather than specifically on medical treatment. • There is little risk of the patient needing to be admitted compulsorily and quickly to hospital. • There is a need for enforceable power to require the patient to reside at a particular place.	• The main focus is on ensuring that the patient 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.

Appendix C

Time limits with respect to Guardianship applications

Action	Time Limit	Example
Application	The applicant must have personally seen the patient within the period of 14 days ending on the date of the application.	If the applicant last saw the patient on 1st January, the application must be signed before 14th 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 patient on 1st January, the second doctor's examination must take place on or before 7th 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 1st January, the medical recommendations must be signed by the doctors concerned before midnight on that day
Application forwarded to the relevant LSSA	Within the period of 14 days beginning the date on which the patient was last examined by a doctor for the purposes of the application	If the patient was last examined on 1st January, the application must reach the LSSA by the end of 14th January

Appendix D

Duties and Powers of Private Guardians

Duties:	
1	To appoint a registered medical practitioner to act as the patient's "nominated medical attendant" who will care for the patient's general health and determine whether the criteria are met for renewing or confirming the patient'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 patient when first received into guardianship
5	To inform the LSSA through the allocated worker of permanent changes to their address or that of the patient 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 patient 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 patient 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 patient to live at a place specified by the guardian
2	To require the patient 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 patient is residing to any registered medical practitioner, AMHP or other specified person
4	To "take into custody" and return a guardianship patient who is absent without leave from the place where they are required to be

Appendix E

LSSA responsibilities to Guardianship patients, private Guardians and nearest relative

Responsibilities to the patient:	
1	To allocate a qualified worker throughout the duration for which the LSSA is the responsible authority for the guardianship order
2	To arrange visits to the patient at intervals of no more that 3 months
3	To arrange at least one visit a year by a doctor
4	To arrange visits to patients who are in care homes or hospital, “as would be expected to be taken by their parents”
5	To ensure that the patient is informed of their right of appeal to a Mental Health Review Tribunal and of Independent Mental Health Advocacy.
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 order (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 patient 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 order; that they are consulted on and informed or any changes in the requirements of the guardianship order and that when implemented they are advised about Independent mental Health Advocacy (IMHA)

Appendix F

Front sheet pro-forma for Guardianship Renewal Report

Renewal of Guardianship Reports

Name:

Date of Birth:

Address:

Date of Original Guardianship Order:

Nearest Relative:

Address;

Guardian:

Address;

RC/NMA:

Address;

G.P:

Address

Allocated Worker (i.e. Author)

Office address;

Date

Appendix G

Guidance checklist on the protocols for Guardianship applications -

For patients who are not currently detained under the Mental Health Act	
1.	The Director of the LSSA Cumbria will receive: • An application for Guardianship from an Approved Mental Health Professional (AMHP) or nearest relative • With two medical recommendations attached • An accompanying minutes and comprehensive care plan clarifying the consultation and decision making with respect to the application • A care plan and report from the allocated worker with the proposed names for the guardian, nearest relative, allocated worker on behalf of the LSSA, RC/NMA, and the proposed requirements of the order
2.	The Director of the LSSA, or delegated representative, will check the application with the AMHP and/ or nearest relative to ensure that: • The applicant has seen, completed the application and forwarded it to the Director within 14 days from the day on which the patient was last examined by one of the recommending doctors • If there are separate medical recommendations, no more than 5 clear days have elapsed between the first and last examinations • The application and medical recommendations relate to the same patient • The application and medical recommendations are signed by people who are qualified to do so • The guardian is specified, and if a private guardian, they have signed to state that they are willing to act as guardian. **The above conditions must be met to avoid requiring a new application.**
3.	When the guardianship application is approved, it has been agreed that all original Mental Health Act documents, a copy of the minutes and of the comprehensive care plan should be forwarded **immediately** to the Mental Health Act administrators. This will enable formal scrutiny of the medical recommendations and application 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.
4	A suitably qualified worker is allocated is to fulfil the LSSA's statutory duties regarding the patient, nearest relative and private guardian when agreed by the LSSA (as described in Appendix D)
5	The allocated worker will support the consideration of discharge of the guardianship order whenever the RC/NMA completes a renewal authority on Form 9 and will provide a report for the Director of the LSSA
6 .	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	CCC and CPFT will audit the effectiveness of receipt and scrutiny of documents on an annual basis. (CoP Chapter 13:20 requires this to be done on a "regular basis").

Appendix H

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

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 may …..Place him under the guardianship of a local social services authority as may be so specified". In addition to the above, further legislation gives the power to make guardianship orders to the Court of Appeal under the Criminal Appeal Act 1968; to magistrates courts for breaches of orders and injunctions under section 51 of the Family Law Act 1996.

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 – a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and b) 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 "LSSAs should appoint a named person to respond to requests from the courts about mental health services provided in the community including guardianship". In Cumbria the Court Services should alert the County AMHP service, to offenders for whom the use of the Section 37 could be appropriate. Alternatively, the assessing doctor who identifies that the grounds for a possible guardianship order are met, may refer as described below.

Section 37 Guardianship Order		
May be made By	A magistrates' court or the Crown Court	
	Where made by the Magistrates' court	Where made by the Crown Court
In respect of a person who is aged 16 years or over and who is	a) Convicted by that court of an offence punishable (in the case of an adult) on summary conviction with imprisonment Or b) Charged before (but not	Convicted before that court for an offence punishable with imprisonment (other than murder)

	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 made the omission charged	
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.		
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.		
Under Section 37(2) if the court wishes to consider a guardianship order, it must:	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 the MHA	
If the doctors giving evidence wish to recommend guardianship, they should consult the LSSA for the home area. In Cumbria this will be by referring to the relevant service. 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 order, the appropriate Team Manager should be contacted at the earliest opportunity and an AMHP identified to work with the allocated worker.		
Similarly a case conference should (as in 7.2.1 above) confirm that the grounds for guardianship are met, namely that: a)the patient is suffering from mental disorder of a nature and degree which warrants their reception into guardianship (N.B. mental disorder does not include learning disability unless associated with abnormally aggressive or seriously irresponsible behaviour) b)it is necessary in the interests of the welfare of the patient or the protection of others that the patient 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		

The allocated worker will send a copy of the Social Circumstance Report, the draft comprehensive care plan and minutes of the Guardianship Meeting and statement by the proposed private guardian (if necessary; see below) to the Director of the LSSA, enclosing a 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 patient)
on the order of ……Court (sentencing court)
following the advice of two doctors one of whom is Section 12 approved
Signed……(Director of the LSSA)
Dated…….
On behalf of Cumbria 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

I (Name) ……
Of (Address)……..
…….
Am willing to act as the guardian of:
(Name of patient)……..
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 Cumbria 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 patient 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:
…….(name of the proposed guardian)
of ……..(address of the guardian)
being the guardian approved by Cumbria County Council / the allocated worker for Cumbria County Council / do direct that …….(name of the patient)
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 patient

Under section 37 (2): 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 the case before deciding if guardianship is "the most suitable" outcome.

If a guardianship order is made, the court will issue a guardianship order, which includes the name of the patient, 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 patient who is subject to the order is required to go to a particular address, arrangements should be in place to take him/her there.

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. The nearest relative does not have the right to request discharge of the order but do have the right to apply to the mental Health Review tribunal (CoP Chapter 26: 37).

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 same arrangements for their return apply as for section 7 guardianship

Appendix I

Nominated receivers of Guardianship Orders

Please note that County AMHPs should be approached first to receive Guardianship applications. Receivers of Orders are there as Gatekeepers to Guardianship and there should be no assumption that all applications will be received. Applications will not be considered without relevant and appropriate documentation supplied.

- Rob Chapman
  County AMHP
  CRHT East
  Carleton Clinic
  Cumwhinton Drive
  Carlisle CA1 3SX
  Tel: 01228 602169. FAX: 01228 602839
  Email: rob.chapman@cumbria.nhs.uk

- Pauline Rigby
  County AMHP
  CRHT East
  Carleton Clinic
  Cumwhinton Drive
  Carlisle CA1 3SX
  Tel: 01228 602169. FAX: 01228 602839
  Email: pauline.rigby@cumbria.nhs.co.uk

- George Smith
  County AMHP
  CRHT East
  Carleton Clinic
  Cumwhinton Drive
  Carlisle CA1 3SX
  Tel: 01228 602169. FAX: 01228 602839
  Email: george.smith@cumbria.nhs.co.uk

- Sam Scrivener
  County AMHP
  CRHT West
  West Cumberland Hospital
  Hensingham
  Whitehaven CA28 8JG
  Tel: 01946 68502 FAX 01946 66635
  Email: sam.scrivener@cumbria.nhs.uk

- Erik Saich
  County AMHP
  CRHT West
  West Cumberland Hospital
  Hensingham
  Whitehaven CA28 8JG
  Tel: 01946 68501 FAX 01946 66635

Email: erik.saich@cumbria.nhs.uk

- Paul Waddington
  County AMHP
  CRHT South
  Danegarth
  Furness General Hospital
  Barrow-in-Furness LA14 4LF
  Tel: 01229 404367. FAX: 01229 842407
  Email: paul.waddington@cumbria.nhs.uk

- Catherine McGlade
  County AMHP
  CRHT South
  Danegarth
  Furness General Hospital
  Barrow-in-Furness LA14 4LF
  Tel: 01229 404377. FAX: 01229 842407
  Email: catherine.mcglade@cumbria.nhs.uk

- Nigel Stokes
  County AMHP
  CRHT South
  Danegarth
  Furness General Hospital
  Barrow-in-Furness LA14 4LF
  Tel: 01229 404377. FAX: 01229 842407
  Email: nigel.stokes@cumbria.nhs.co.uk

- Kevin Hoban
  Team Manager
  Out of Hours Team
  Tel: 01228 402273
  Email: kevin.hoban@cumbriacc.gov.uk

- Judith Whittam
  Assistant Director
  Adult and Local Services HQ
  15 Portland Square
  Carlisle CA1 1QQ
  Tel: 01228 227116 FAX: 01228 227108
  Email: judith.whittam@cumbriacc.gov.uk

- Chris Poate
  Community Services Manager West Network
  Brookside Mental Health Centre
  Birdcage Walk
  Wigton CA7 9HB
  Tel: 016973 66650. FAX: 016973 66651
  Email: chris.poate@cumbria.nhs.uk

- Sue Bowman
  Service Manager, Older Adults
  Adult and Local Services
  Civic Centre
  Rickergate
  Carlisle CA3 8QG
  Tel: 01228 227000
  E mail: sue.bowman@cumbriacc.gov.uk

- David Le Mare
  County Manager Mental Health – Commissioning
  Adult & Cultural Services
  Cumbria County Council
  NHS Cumbria Offices
  Tenterfield
  Brigsteer Road
  Kendal LA9 5EA
  Tel: 01539 797821 Fax: 01539 726687
  E mail: david.lemare@cumbriacc.gov.uk

- Trevor Thompson
  Professional Lead for Mental Health Social Work
  Kirkstone Unit
  Westmorland General Hospital
  Kendal
  LA9 7NA
  Tel. 01539 795839
  E mail: trevor.thompson@cumbriacc.gov.uk

Cumbria County Council | Cumbria Partnership NHS
NHS Foundation Trust

Date: _____

I, Richard Parry, in my capacity as Corporate Director of Adult and Local Services, do nominate and authorise _____ to act on my behalf for the purpose of receiving applications for Guardianship, under Sections 7 and 37 of the Mental Health Act 1983.

This notice complies with regulation 21 of the Mental Health Regulations 2008.

This authority will be revoked at the point that _____ ceases to be employed by Cumbria County Council.

Signed:

Name: **Richard Parry**
Title: **Corporate Director of Adult and Local Services**

I hereby accept responsibility for representing the LSSA in the receipt of Guardianship applications, as outlined above.

Signed:

Name: _____

Title: _____

_____

Appendix J

Mental Health Act administrators and their contact details

Margaret Chadwick
Dane Garth
C/o Furness General Hospital
Dalton Lane
Barrow in Furness
Cumbria LA14 4LF

Tel: 01229 491339 Mobile 07795 413547
Email: Margaret.Chadwick@mbpct.nhs.uk

Liz Kegg
North Cumbria Acute Hospitals Trust
West Cumberland Hospital
Hensingham
Whitehaven
Cumbria CA28 8JG

Tel: 01946 693181 Mobile: 07776 245223
Email: Elizabeth.Kegg@ncumbria-acute.nhs.uk

Sandra Patrickson
Cumbria Partnership NHS Foundation Trust
Carleton Clinic
Carlisle
Cumbria CA1 3SX

Tel: 01228 602359
Email: Sandra.Patrickson@ncumbria.nhs.uk

MH Legislation Unit Manager

Dave Eldon
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