

AMHP Service

Bedfordshire and Luton Guardianship Policy

Organisations	Central Bedfordshire Council (CBC) Bedford Borough Council (BBC) Luton Borough Council (LBC) East London Foundation Trust (ELFT)		
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Right Care, Right Person Statement:

Right Care, Right Person (RCRP) (DoH, July 2023) sets out a collective national commitment from the Home Office, Department of Health & Social Care, the National Police Chiefs' Council, Association of Police and Crime Commissioners, and NHS England to work to end the inappropriate and avoidable involvement of police in responding to incidents involving people.

EDT and the AMHP Service will signpost and respond to contact's taking into consideration the RCRP principles. Meaning, where possible the right person with the rights skills, training and expertise will respond. Staff will use the escalation process in place if they feel this is required. The police have a legal duty to Keep the Kings peace, respond to imminent threat to life and respond where a crime has been committed. All documents will be reviewed and updated in 2025 to include specific details relating to RCRP.

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1. Introduction

- 1.1 The three Social Services Local Authorities (LSSAs) in Bedfordshire and Luton, Bedford Borough Council (BBC), Central Bedfordshire Council (CBC) and Luton Borough Council (LBC), are committed to working with the East London NHS Foundation Trust (ELFT) to deliver a high quality, responsive, safe and effective service in relation to Guardianship referrals.
- 1.2 The day to day operational management of the Bedfordshire and Luton Daytime AMHP Service has been delegated to ELFT through the section 75 Partnership Agreements. The Daytime AMHP Service is responsible to provide a response to all urgent and routine Mental Health Act referrals that fall under part two of the Mental Health Act. The operational management of the Emergency Duty Team (EDT) is hosted by CBC on behalf of all three LSSAs. EDT reviews Mental Health Act Assessment requests out of hours to determine if urgent consideration from an AMHP is required.
- 1.3 The Mental Health Act Codes of Practice (CoP) 30.16 identified LSSAs should have a policy to set out arrangements for the way in which it will discharge its responsibilities in relation to Guardianship.
- 1.4 Central Bedfordshire Council, Bedford Borough Council, Luton Borough Council have agreed to adopt a single Guardianship Policy which will be implemented across all three LSSAs. The process for approving and reviewing this policy and all related practice guidance is the Strategic Governance Group (SGG) which in turn, links into each respective organisations governance arrangements.
- 1.5 This Policy and related Practice Guidance is intended to be understood and adhered to by all AMHPs who practice within Bedfordshire and Luton. It is acknowledged Guardianship Applications require a planned and co-ordinated approach therefore AMHP Day Services are likely to take a lead in these applications however, EDT AMHPs should ensure a good level of understanding of the legal responsibilities and local arrangements.
- 1.6 The Health and Social Care Information Centre conducts an annual analysis of Guardianship under the Mental Health Act. All LSSAs are required to report on the following; number of cases opened in the year, number of cases continuing at the end of the year and number of cases closed during the year. It is important AMHPs follow the guidance in place to ensure effective monitoring of Guardianship cases.

2. Legislative Framework

- 2.1 This policy and related practice guidance sets out the use of Section 7 (Guardianship) of the Mental Health Act 1983 [as amended by] the Mental Health Act 2007.
- 2.2 It is essential when AMHPs undertake functions under the MHA they understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the Act.
- 2.3 The MHA provides for:
 - **Section 7 to 10** legal framework for applications for Guardianship, its effects, regulations and transfer of Guardian.
 - **Section 18(3)** gives the power to take a person subject to Guardianship into custody where they are Absent Without Leave (AWOL).

- **Section 18(7)** gives power to take persons subject to Guardianship to a place where they reside.
- **Section 19** sets out the regulations for the transfer of a person into Guardianship from detention in hospital under the Act.
- **Section 20** sets out the framework for the renewal or expiry of Guardianship.
- **Section 21, 21A and 21B** considers the arrangements for persons who are absent without leave (AWOL) from the place where they are required to reside.
- **Section 23** Discharge from Guardianship.
- **The Mental Health (Hospital, Guardianship and Treatment) (England) regulations 2008** sets out the requirements for the procedure 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 or transfer from Guardianship (11), renewal of authority for Guardianship (13), Absence from leave for more than 28 days (14), and removal to England where a person is received into Guardianship (15).

2.4 Chapter 30 of the Codes of Practice (CoP) provides detailed guidance regarding the Guardianship applications, key elements of the CoP have been included throughout this Policy and related Practice Guidance.

2.5 This Policy does not replace the requirement for AMHPs and professionals to consider other Legislative frameworks or Codes of Practice which impact on their roles and responsibilities. It is important AMHPs and professionals consider all relevant legislation, CoP, Regulations, Reference Guides and Case Law to inform their practice.

3. Legal Access

3.1 Due to the complexity of Guardianship applications it is recommended the allocated AMHP seeks legal guidance from the relevant Local Authority when considering applications. AMHPs should liaise with the AMHP Leads or EDT on-call manager to progress any requests for legal support.

3.2 LSSA legal advice is available via LSSAs for all AMHPs in each area, AMHP's should liaise with the AMHP Lead to obtain approval for legal advice. The Local Authorities process for obtaining legal access should be followed in each case.

3.3 Contact can be made with relevant legal team on:

Bedford Borough Council

Adult Social Care (legal)

01234 276066

Adult & Children's Education (legal)

01234 228743

Central Bedfordshire Council

Pathfinder Legal

Child Protection Team: childcareduty.shefford@pathfinderlegal.co.uk

Adult Social Care Team: adultsocialcare@pathfinderlegal.co.uk

Luton Borough Council

Senior Solicitor 01582 547495,

Solicitor 01582 547496

Legal Admin Team - 01582 546549 / 547468.

- 3.4 Out of hours a shared agreement is in place with all three local Authorities, the advice provided will be brief and should only be used in emergencies. Legal advice contact can be made with Weightmans on 0800 3029259. Requests for legal access must be approved by the EDT on-call manager, support will be provided by the manager to ensure the usual processes are followed.

4. Purpose of Guardianship

- 4.1 The CoP 30.2 states “The purpose of Guardianship is to enable people to receive care outside hospital when it cannot be provided without the use of compulsory powers. Such care may or may not include specialist medical treatment for mental disorder.”
- 4.2 Under CoP 30.3 The Local Authority or someone else approved by the Local Authority can act as a Guardian. Guardians have three specific powers;
- Decide where a person should live (taking precedent over an attorney or deputy).
 - Require a person to attend for treatment, work, training or education at specific times and places (however, they cannot use force).
 - Demand a doctor, AMHP or relevant person has access to the person at the place where they live.
- 4.3 Guardianship provides an authoritative framework for working with people, 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).

5. Roles and Responsibilities

- 5.1 When considering if a Guardianship application or renewal is appropriate a multi-disciplinary approach is required. Involvement from other professionals and involved people is required to support the decision making.
- 5.2 Below is a list of people who may be involved when considering Guardianship, this list is not exhaustive and depending on the situation other people or professionals may support the process:
- **The person, Nearest Relative, family, carers;** should be involved in all consideration as historical and current information, views and suggested care arrangements can be contributed.
 - **Responsible Clinician (RC);** approved clinician with overall responsibility for a person’s care. The RC will provide the medical recommendation for a person to be received in Guardianship by the Local Authority. RC’s will co-ordinate reviews of the Guardianship and will discharge it if no longer required.

- **Nominated Medical Attendant;** the equivalent to the RC for people with a private Guardian.
- **Director of Adult Social Care;** will be the named Guardian whenever the Local Authority accepts someone in Guardianship. Locally the responsibility of ongoing monitoring and support is delegated to the allocated Care Manager.
- **AMHP;** is responsible for co-ordinating the Guardianship assessment or review with the RC and will decide if an application is being made or if alternative actions are required.
- **AMHP Leads and EDT Managers;** are responsible for implementing the Policy and Practice Guidance and ensuring AMHPs are informed of the police and receive sufficient support to undertake their role.
- **Care co-ordinator;** is responsible for ensuring ongoing support to the person and providing a report to support any Guardianship consideration. The Care co-ordinator is also responsible for updating and reviewing the support plan and risk assessments.
- **Mental Health Act Office;** it is the responsibility of the MHA Office to receive the completed Guardianship documentation and to update and maintain the Guardianship Register for Bedfordshire and Luton.
- **Independent Mental Health Advocate (IMHA);** people being considered or accepted into Guardianship should have access to an IMHA.

6. Assessment of Guardianship

- 6.1 When a referral is received by the Daytime AMHP Service or EDT the Management and Allocation of AMHP Referrals Practice Guidance should be followed in all instances. This will ensure the referral is managed in a timely manner and evidences the actions undertaken in line with CoP 30.16.
- 6.2 Guardianship applications can be completed by the persons Nearest Relative, it is important Nearest Relatives who are considering an application are supported by the Daytime AMHP Services.
- 6.3 Guardianship assessments are carried out by an AMHP and two doctors, the guiding principles in Chapter 1 of the CoP should be implemented in all cases. As with applications for detention in hospital (chapter 14) AMHPs and doctors making recommendations should consider whether the objections of the proposed application could be achieved in another, less restrictive way (CoP 30.10).
- 6.4 CoP 30.8 is clear an application for Guardianship can only be made for a person over the age of 16 who is not a ward of court on the grounds that;
 - The person is suffering from a mental disorder of a nature or degree which warrants their reception into Guardianship, and
 - It is necessary, in the interests of the welfare of the person or for the protection of others that the person should be received.
- 6.5 Guardianship is most likely to be appropriate where,
 - The person is likely to respond well to the Guardian and comply with treatment and care for their mental disorder and

- There is particular need for someone to the authority to decide where the person should live or to insist the doctors, AMHP or other people be given access to the person. (CoP 30.9)

6.6 Should it be concluded during an assessment a person needs to remain liable to be recalled to hospital and the person is eligible a Community Treatment Order (CTO) may be appropriate (CoP 30.15). It is important AMHPs have due regard for all possible options when concluding their assessment.

6.7 Guidance regarding Guardianship Assessments and the Guardian Powers is detailed/contained in the Guardianship Practice Guidance and should be read in conjunction with this Policy.

7. Special consideration for MCA and Deprivation of Liberty

7.1 AMHPs are required to consider legal frameworks which can impact on their role, in particular the interface between the MHA 1983/2007 and MCA 2005. It is recognised the interface can be complex and support may be required from Lead AMHPs or EDT Managers.

7.2 Guardianship does not provide authorisation for the person to be treated without the permission or consent (CoP 30.6). Guardians are not authorised to provide consent on behalf of the person.

7.3 A person being received into Guardianship will not affect the authority of an appointed attorney or deputy under the MCA. However, the attorney or deputy will be unable to make decisions about where the person is to reside and will be unable to make a decision which conflicts with a Guardian (CoP 30.7).

7.4 Where a person lacks capacity to make some or all decisions concerning their own welfare, MCA 2005 can be relied upon. This is important when care or treatment is being provided by Section 5 of the MCA (CoP 30.11). It is important for AMHPs and RC's to consider all circumstances and the impact of the decisions they make.

7.5 Where a person who lacks capacity to make a decision regarding their accommodation and is aged over 16, Guardianship will not be necessary as section 5 of the MCA or the decision of an attorney or deputy and where relevant a DoLS authorisation can be made (30.12). CoP 20.12 highlights on some occasions Guardianship may still be appropriate due to alternative factors such as the person may benefit from a Guardian, there is a need to have explicit statutory authority for the person to be returned to the place they should be living or it is thought to be important that decisions about where the person should be in the hands of a single authority.

7.6 CoP 30.5 is clear Guardianship must not be used to impose restrictions that amount to a deprivation of liberty.

7.7 Whilst a person may be subject to Guardianship and have an authorised DoLS, CoP 30.9 highlights Guardianship is most likely to be appropriate where a person is thought to be likely to respond well to the Guardian and is more willing to comply with the necessary treatment and care for their mental disorder.

7.8 CoP 30.34 highlights Guardianship does not prevent a DoLS being authorised if the person needs to be detained in hospital in their best interests in order to receive care and treatment. A DoLS authorisation or Court of Protection order can be sort as long as;

- It would be inconsistent with the Guardian's decision about where the person should live, and
- The person does not object to be kept in hospital for treatment for mental disorder or to receiving that treatment.

8. Renewals

- 8.1 A Guardianship order lasts for up to six months, it is renewable for up to a further six months and then every 12 months. These renewal periods start from when a person is first received or transferred into Guardianship.
- 8.2 Two months before the expiry of the Guardianship Order the Mental Health Act Office should remind the RC and AMHP of the need to undertake a review.
- 8.3 Regular reviews of the Guardianship should be undertaken by the care co-ordinator and RC as part of the ongoing monitoring of the persons progress and the effectiveness of the Guardianship. These reviews should be undertaken as part of the multi-agency CPA or review meetings.

9. Appeals

- 9.1 When a person has been received into Guardianship or whenever it is renewed they must be informed of their rights to appeal and they have the entitlement to free legal advice and representation (CoP 12.6).
- 9.2 Unless the person requests otherwise the information should also be given to their NR (CoP 12.7). Due consideration will also be made to the importance and purpose of involving NR detailed in Chapter 5 of the CoP.
- 9.3 Locally the AMHP is responsible for initially informing the person of their rights, following this the RC and Care Co-ordinator should continue to inform the person of their legal status and rights.

10. Discharging Guardianship

- 10.1 A person may be discharged from Guardianship at any time by the LSSA, the RC authorised by the Local LSSA or the persons NR (CoP 30.17).
- 10.2 Discharge decisions by the LSSA may only be taken by;
- The LSSA itself, or
 - Three or member of the LSSA, or
 - A committee or subcommittee of the LSSA authorised for that purpose.
- Where decisions are taken by the last two points all individuals must agreed (CoP 30.18).
- 10.3 Under CoP 30.19 LSSA may consider discharging patients at any time, but must consider doing so when receiving a report from the persons nominated medical attendant or RC when renewing their Guardianship under S.20 of the Act.
- 10.4 Under CoP 30.37 it is concluded that if a person consistently resists exercise by the Guardian of any of their powers Guardianship is not the most appropriate form of care for the person. It is highlighted the Guardianship should be discharged. Prior to this discharge

the LSSA should consider if a change in Guardian or person who exercises the LSSAs powers might be appropriate instead.

10.5 All Guardianship discharged must be recorded and the consideration to this discharge must be evidenced.

11. Relating Documents

- Guardianship Practice Guidance
- AMHP Operational Policy- all documents.