The Regulation and Quality Improvement Authority

RQIA

Mental Health and Learning Disability

Guardianship

Service User Experience

1 April 2015 to 31 March 2016

npm national preventive mechanism

informing and improving health and social care
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1.0 Introduction

The Regulation and Quality Improvement Authority (RQIA) is the independent body responsible for regulating and inspecting the quality and availability of Northern Ireland's Health and Social Care Services. RQIA was established under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, to drive improvements in health and social care services.

RQIA has a specific responsibility, under the Mental Health (Northern Ireland) Order 1986, to assess health and social care services provided to people with a mental illness or a learning disability. These responsibilities include: promoting good practice; preventing ill treatment; remedying any deficiency in care and treatment; and terminating improper detention in hospital or guardianship.

The work undertaken by the Mental Health and Learning Disability team (MHLD) is underpinned by a human rights framework and the Human Rights Act (1998). RQIA examines the quality of services and interviews service users, carers and staff about their experiences. This informs a wider programme of announced and unannounced inspections of services. Additionally, RQIA is designated as one of the four Northern Ireland bodies that form part of the UK's National Preventive Mechanism (NPM).

2.0 Guardianship

Guardianship is the exercise of specific compulsory powers under the Mental Health (Northern Ireland) Order 1986. The purpose of Guardianship is primarily to ensure that individuals who have a mental disorder receive the **care and protection** they require in the community where this cannot be provided without the use of compulsory powers.

By using the powers of guardianship, service users can be required to: reside at a specified location; attend places for the purpose of medical treatment, occupation, education or training; and allow access to visiting professionals and/or others, identified under the Order. Guardianship assists appointed guardians to establish an authoritative framework, using the minimum restriction necessary, to enable those subject to guardianship to live as independently as possible in the community. Guardians are appointed by the authorising trust and are generally, but not exclusively, the service user's keyworker or other professional involved in his care and treatment. A guardian, less frequently may be a close relative or informal carer of the service user and not a member of trust staff. The trust continues to retain responsibility, through the guardian, of ensuring that guardianship remains appropriate and monitoring an individual's guardianship through regular visits and reviews. The guardian can also refer to the Mental Health Review Tribunal as required and that the compulsory powers are retained no longer than is essential to provide the care and protection necessary for the service user.

3.0 Purpose of the report

The purpose of this report is to present the findings of the experiences of service users subject to guardianship, during the period 1 April 2015 to 31 March 2016. At the commencement of this review there were a total of **55** people subject to guardianship. Over the previous three years this number has remained consistent. The use of guardianship among different programmes of care and by different trusts has also remained consistent with some trusts continuing to make use of the powers of guardianship more than others. Service user experience is a key element to MHLD's review of guardianship processes. In accordance with the RQIA Business Plan, a number of service users, were offered an opportunity to meet with an inspector to reflect on their experiences of guardianship.

From 1 April 2014 to 31 March 2015, a MHLD inspector interviewed **13** service users subject to guardianship, from a list of **23** service users, who had returned pre interview questionnaires. **10** service users were unavailable for interview.
A key objective for the MHLD team is to ensure that the service users, subject to guardianship are consulted and a stand-alone service user experience report is produced.

4.0 Breakdown of Guardianship Orders by Trust Area

Table 1:

Trust Area	Number of service users
BHSCT	11
NHSCT	26
SEHSCT	8
SHSCT	9
WHSCT	1
TOTAL:	**55**

Out of the **55** patients subject to Guardianship orders in 2015/16, **5** lived in their own homes. **32** out of the remaining **50** lived in residential, nursing or supported living settings and had not been offered an interview in the previous year by RQIA. These patients who hadn't been offered an interview were prioritised for review by the MHLD team.

The facilities in which they resided were contacted in order to arrange an interview by the inspector in the review period of 1 April 2015 to 31 March 2016.

Of the **32** service users offered an interview by the inspector, Table 2, provides details of the breakdown of numbers by programme of care:

Table 2 Breakdown of Guardianship by Programme of Care

Programme of Care	Number of Service Users
Adult Mental Health	22
Older Peoples Mental Health Services	2
Learning Disability	8
TOTAL	**32**

Two of the above people were not seen or interviewed by the inspector during the review, as one of these had gone out for the day and the other declined to be seen at the time of the visit. This left a total of **30** available for interview. Of these **30** patients, two had limited or no communication skills. Staff assisted with their responses and the patient experience interviews (PEIs) were completed from discussion with the care staff and from the service user's notes.

5.0 Findings

The MHLD Inspector explored the experiences of service users in two ways:-

(i) An examination of the care records (32 records in total, including the 2 patients declining to be interviewed.)
(ii) An interview with the service user (30 In total)

6.0 Examination of the care records

Four areas were selected for review findings as follows:-

A: Assessment and review of capacity

There was evidence of assessment and review of capacity in relation to decision-making for all **32** service users. Records outlined pathways to be followed to support patients who had been assessed as lacking capacity to make certain decisions. Service user records reviewed by the inspector evidenced that a lack of capacity regarding one aspect of a service user's decision making did not automatically transfer to all areas of a person's life.

B: Care plans

Care-planning was evidenced in all the notes reviewed. Many care plans were extremely detailed and all individualised. There was evidence of regular updating by staff and of review of care-plans for all **32** service users.

C: Service user and carer involvement

There was evidence of service user involvement and /or carer involvement in the care plans of **28** service users. Care plans had been discussed and signed by **24** service users **four** had been shared and signed by the next of kin and frequently care plans were signed by both. There was evidence of discussion regarding facility contracts, advance decisions such as DNR (do not resuscitate) and other examples of service user choice such as financial arrangements to be followed, visiting arrangements, and food and activity choices. In those cases where the care plan was not signed by either the service user or the carer, there was evidence in the notes that the care plan had been shared with them. It was recorded that they lacked capacity to sign where relevant. There was some confusion amongst a small number of service users at interview, where they claimed they had not seen or been included in care plans but, in the notes, it was apparent that they had signed the care plan. This was not because they had signed a document unaware of what it contained, but because of significant memory impairment. None of the service users expressed dissatisfaction with their care-plan.

D: Referral to the Mental Health Review Tribunal

The Mental Health Review Tribunal (MHRT) has powers to direct the discharge of patients whom it considers no longer meet the criteria for guardianship under the Mental Health Order (NI) 1986. An application to the MHRT can be made by the service user once during the first 6 months of reception into guardianship and again during the second six months and subsequently once annually, during each renewal period.

There is also a requirement on the responsible Trust to refer a person to the MHRT where their case has not been considered by the Tribunal within the previous two years.

While progress notes and care plans were detailed and up to date, there was limited evidence in many of the records of the date of last referral to the Mental Health Review Tribunal (MHRT).

Out of **32** service users, **18** had either a date of a MHRT review recorded or date when due. Some of these related to service users who had transferred from detention to guardianship and the MHRT review had taken place while in hospital.

Five service users had not been subject to guardianship for a sufficient time to warrant a referral to a mental health review tribunal MHRT and there was evidence of statutory renewal of guardianship by the Trust in the notes of eight service users but no recorded details of referral to MHRT, when it was due or when last heard. **One** person had a date and time for a MHRT hearing but there was no evidence of the outcome. On contacting the guardian, the inspector was informed that the MHRT hearing had been postponed pending a judicial review. There was no evidence that this information had been passed on to the facility responsible for providing the care.

Many staff and service users confused the annual Trust multidisciplinary renewal of guardianship with the review by the MHRT.

7.0 Issues Raised by Service Users

All **32** service users subject to guardianship were offered an interview by the inspector; **two** were either unavailable or declined on the day. Of those service users who were seen by the inspector **(30 in total)**, a number of different themes emerged:

A: Knowledge of guardianship

17 service users stated that they knew they were subject to guardianship and most of these (15 out of 17) demonstrated an understanding of what this meant for them.

Of the remaining **13,**

- **seven** stated that did not know that they were subject to guardianship or what it meant
- **four** said they were unsure about guardianship or what it entailed,
- **two** people had limited or no communication and were unable to respond

B: Awareness of guardians

23 out of the **30** service users interviewed were able to give the name of their guardian;

- **one** person had no recollection of the name,
- **four** were unsure of the name of the guardian
- **Two** people were unable to respond.

The roles of the key worker, the community psychiatric nurse (CPN) and the approved social worker (ASW) were confused by service users and sometimes by staff, as it is not always obvious which of these was the guardian. The guardian's name was generally recorded in the notes and any changes to the details of that individual also noted. However difficulties did arise when, for example when the current guardian was off on annual or sick leave and another worker was covering for them. This was not always made clear to staff in the residential facility or to the service user and there was understandable confusion. On another occasion, staff informed the inspector that the service user's son was his guardian but following contact with the trust, it was clarified that this was not the case. The son was the service user's controller and next of kin but in this case the guardian continued to be an employee of the trust.

Staff were generally uncertain about the statutory nature of the guardian's role or about any specific responsibilities accompanying the guardianship arrangement.

C. Contact with guardians

Regulation 5 of the Mental Health (Nurses, Guardianship, Consent to treatment and Prescribed Forms) Regulations (NI) 1986 requires that the trust exercise general supervision over every patient received into guardianship under the Order. It requires trusts to make sure that every patient subject to guardianship is visited at such intervals as the trust may determine but at intervals of not more than **three months**. At least one such visit in every year should be made by a Part II doctor (Consultant Psychiatrist)

- **13** of those interviewed expressed satisfaction with the frequency of visits by guardians;
- **11** service users were unhappy with the level of contact,
- **two** service users had limited communication and
- **four** service users were uncertain about the frequency of visits by guardians, although it was apparent from the notes that they had been visited regularly.

Service user care records documented that guardians visited on a regular basis, with the date of last confirmed visit frequently being in the last few weeks;

Table 3 indicates the frequency of face to face contact between service users and guardians:

Table 3 Frequency of Direct Contact

Frequency of visits	Number
Visited at least quarterly	14
At least monthly	8
At least fortnightly	7
Weekly	2
Less often than quarterly	1
TOTAL	**32**

With the exception of one, service users were seen at least quarterly. Of those **11** service users who expressed dissatisfaction with frequency of visits, a number had significant memory impairment. **Nine** of them had received a visit from the guardian within the last 4-6 weeks. Only **one** service user who wished to see the guardian more often had not been visited since January 2015. This was raised with staff who agreed to contact the guardian regarding more regular visits.

Most service users were able to contact a guardian directly and many had access to their mobile phone numbers. Others stated that if they wished to see their guardian more often, they would ask a staff member to ring and arrange a meeting.

No service user complained of being unable to access a guardian if required.

D: Use of restrictions

The Mental Health (NI) Order 1986 states that the effect of a guardianship application, duly made in accordance with the Order, shall confer on the Authority

(i) The power to require the patient to reside at a place specified by the Board or person named as guardian;

(ii) The power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;

(iii) The power to require access to the patient to be given at any place where the patient is residing to any medical practitioner, approved social worker or other person so specified

-Conditions of residence

From the notes it was clear that all **32** service users were obliged to reside in a certain place at interview:-

- **19** service users were aware of this and understood the reasons;
- **six** were unsure about this and believed they could live anywhere;
- **three** knew there was a residence restriction but did not accept or could not recall why it was required;
- **two** people had limited or no ability to communicate their views.

Most of those interviewed expressed contentment with their current placement but **six** people stated that they would rather be elsewhere. **One** said he would like to move somewhere with more freedom and another stated he would like to go back to hospital.

Four people stated that they would prefer to live closer to friends and family or home. These issues were raised by the Inspector with care staff.

-Conditions of Attendance

Nine out of **32** service users were also obliged to attend certain facilities, activities or day care and this was a structured part of their care plan. All **nine** agreed with this and said that they understood the reasons for the use of this power.

Comments made were:-

"It keeps me busy"

"It makes me feel safe, and provides me with structure to the day".

Others attended some activities but said they didn't have to do anything they did not wish to. **One** person recently had access and attendance requirements removed from their guardianship plan as a gradual reduction in the use of compulsory powers. Another did not attend day-care but stated that she would like to and this was raised with staff who agreed to pursue it with the guardian.

- Conditions of access by mental health professionals

Five out of **32** people also had contact conditions imposed by guardianship, requiring access by mental health professionals.

Only **two** service users out of **32** were subject to the restrictions of **all** three powers- having residence, attendance and access conditions attached to their guardianship order. Staff noted that this was for reasons of safety and the conditions were reviewed regularly to ensure they continued to be required.

E: Activities

Most service users interviewed were content with the range of activities on offer. Such activities included attendance at a day centre, outings, walks, shopping, cookery, computers, visiting library, watching television, singing/listening to music and socialising with others. One facility had a dog therapist which proved popular with service users. At least **nine** were quite independent and organised their own time, visiting friends/family members, attending church and church- related events, occasional shows, playing snooker, or going to the pub for a few drinks. All **9** had arrangements to visit family and friends and were often taken away for trips or weekend breaks.

One lady complained of being bored during the day and said that many of the other residents were unable to hold a conversation. Many service users were too unwell to undertake much activity but enjoyed the companionship afforded by the residential facility. One complained that the evenings could be long and another said that he spent a lot of time smoking but was unable to quit. This was raised with the staff who stated that the facility had plenty of information and education events around smoking cessation but to date, it had little or no impact. They agreed to examine this again and to encourage further smoking cessation events.

One lady was annoyed because she still had her driving licence but she was not allowed access to her car. Staff explained that her memory and recall were so impaired that it would be highly unsafe to allow her to drive and that this had been explained to her. They said that her father took her out regularly.

F: Advocacy

13 service users were aware of the availability of independent advocacy services and **four** of the **13** understood what it was and had made use of it in the past.

- **15** did not know what it was or were uncertain, and
- **two** did not engage or were uncommunicative
- **two** were unavailable for interview.

23 people had never made use of advocacy services, **nine** of these stated that they did not use these services because they were not needed. Most service users were of the opinion that if they wished to complain, or had any issues which distressed them, they would raise it with a staff member or with their guardian and were content that they would be listened to.

One service user who claimed he had never heard of independent advocacy resided in a unit which had a large notice about the service on the front door. All of the facilities stated that they provided information, at least verbally, to service users and/or carers on the availability of advocacy services and many had it in their information pack.

Of the **four** service users who had made use of advocacy services, **three** had done so while in hospital and only one since they moved to the community.

One said it was "…someone who acts on your behalf" and another said it was "…someone who tells you your rights" and "…someone who helps you move on".

All **four** service users who had made use of advocacy said that they found it helpful. Mostly it was in relation to seeking out or moving to new accommodation; although one person said,

"….it was good to have someone from outside to chat".

Advocacy services appear to be less well established in the community than in hospital settings.

G: Respect/dignity afforded to service users

28 out of the **30** service users who were interviewed stated that they felt treated with respect by staff and acknowledged that they were afforded privacy and dignity. **Two** people had limited or no communication.

One person said some staff were "…more respectful than others", another that staff "…won't let me sleep during the day" and another that "…some staff don't always knock before entering the room".

One person wanted to move to a single room where she felt she would have more privacy. These issues were raised with staff in the facilities concerned.

A number of service users had their own mobile phones and could communicate freely. Others stated that they had no problems contacting family or friends as staff will facilitate telephone calls when required.

Some people were in residential or nursing units which had a locked door. On those occasions, the notes contained evidence of the risk assessments on which the decisions were based and details of access arrangements by the service user and/or family and carers. This was in keeping with Deprivation of Liberty safeguards (DoLs) Interim Guidance issued by the DHSSPSNI in October 2010.

A noticeable new development for some service users in these settings was evidence in their notes of copies of declaratory judgements from the High Court which had been sought by the trust. A declaratory judgement is a formal statement by a court pronouncing upon a legal state of affairs. This was mostly utilised by the Southern Health and Social Care Trust and it would be expected that this practice will extend to other trusts where there is a query regarding Deprivation of Liberty issues.

H: Other comments from service users

Most service users recognised the benefits of guardianship and commented that:

"Guardianship keeps me safe";

"It protects and looks out for me"

“It’s a way of keeping you well and off the streets”

“It’s good to have someone looking after me”.

A few people didn’t like it. **Three** wanted it discharged, **three** felt it was too restrictive but “…just have to accept it”, and **three** didn’t mind guardianship but wanted to get out more.

One person stated that she had been seen by the MHRT some years back and had found the whole experience very intimidating and did not want to go through it again.

Many also noted the restrictions it placed on their movements

“I can’t see why a staff member has to accompany me”;

“I don’t like the way they keep my smokes”;

“I’m not allowed my own mobile phone”;

“I’d like to move closer to friends”;

“I get a bit fed up but I can always go for a mooch around”.

When these issues were raised with staff they outlined the reasons for the restrictions and it was clear that these restrictions were proportionate and reflected in the individualised care plans.

One service user stated that while he had no complaints, he would like to know when he was getting out and another stated that he “…didn’t hold out much hope of ever getting off guardianship”

On more than one occasion, there was real evidence of the progress that the service user had made under guardianship. Staff were to be commended for the steps they had taken to ensure they were understood by service users, using different formats, such as repetition, pictorial and signing as many people had significant communication deficits.

8.0 Good Practice Example

A good example was evident with a service user with almost no communication, who resided in a supported living setting. Staff had discovered what foods the person liked and disliked by pointing to them in a magazine. Subsequently they cut out the pictures and posted them on his daily living chart so that he could indicate what he wanted for his meals.

In many instances it was clear to see the regard and affection with which the service users were held by staff and the pride that was taken in their progress and achievements.

9.0 Summary and Recommendations

32 service users out of **55** who are subject to guardianship, (58.2%) were offered an interview by an inspector from MHLD over the period 1 April 2015 to 31 March 2016, and **30** were visited to obtain their views about their experience of guardianship (54.5%).

This was an increase of 30.9% of people interviewed from the previous year, 1 April 2014 to 31 March 2015, where **13** out of **55** service users were interviewed, (23.6%)

Overall, of the service users interviewed, **28** were broadly content to remain under guardianship. However, all of these service users expressed a wish that their guardianship order be kept under review. They asked that any restrictions placed on them by guardianship should be reduced as they became more capable and/or more settled in their accommodation.

The inspector noted five areas requiring improvement.

- The trust should make certain that the name and contact details of the guardian are clearly stated and recorded in the patient's records. This will ensure that the service user and care provider are kept informed of any changes.

- Trusts must inform RQIA of changes to the status of the service user, including changes of the service user's address or changes in relation to the service user's guardian in keeping with the legislative requirements; RQIA will advise the trusts of this requirement.

- Trusts must ensure that service users and care providers are kept informed of guardianship processes. This includes renewal of guardianship and review by the MHRT. Trusts are required to record the date on which a MHRT is due and the outcome of any hearing. This information should be accurately recorded in the service users care record and shared with MHLD; RQIA will reinforce this with trusts at the next meeting of ASW forum and also write to ASW Leads in each trust to reinforce this requirement.

- Where a service user is due to attend a MHRT, the trust should ensure that the service user is supported through the review process.

- The guardian should ensure that a service user is offered and has access to independent advocacy services. Arising from this review, it is evident that this is especially important for service users in community settings.

Marie Crothers – Sessional Officer **Alan Guthrie – MHLD Inspector**

10 May 2016