

Lasting Power of Attorney

The Mental Capacity Act 2005 supports people to make their own decisions for as long as possible.

Under the Act, people can choose someone to manage their affairs through a Lasting Power of Attorney (LPA) if they become unable to do so themselves.

There are two types of LPA:

- Property and Affairs LPA relating to decisions about financial matters
- Personal Welfare LPA relating to decisions affecting health or personal welfare

Applications for both types of LPA are through the Office of the Public Guardian. There is a charge for this service in most circumstances.

For more information and advice, contact the Office of the Public Guardian on 0845 330 2900.

Guardianship

The Mental Health Act allows the appointment of guardians to make decisions on behalf of individuals so they can receive care in the community.

Guardians can compel individuals to live in a certain place, have access to health professionals and attend appointments relating to their care and treatment.

Guardianship must be necessary for the welfare of a person or for the protection of themselves or others. It should involve the minimum of constraint and enable the individual to live as independently as possible.

Guardianship can be arranged for individuals aged 16 or over if an Approved Mental Health Practitioner or the person's nearest relative applies and two doctors approve.

In most cases the local authority is named as the guardian, although a friend or relative may be appointed.

Guardians have the authority to require individuals to:

- Reside at a specified place
- Attend places at specified times for medical treatment, work, education or training
- Allow access to any doctor, Approved Mental Health Professional or other specified person

Guardians cannot authorise medical treatment and have no control over a person's money or property.

A guardianship order initially lasts for six months and can be renewed for a further six months and then annually.

A guardianship order cannot proceed if the nearest relative objects to it unless their powers are transferred to someone else.

If you would like further information, additional copies or would like to receive this leaflet in another language, large print or audio format please contact the Trust Communications Team at Trust Headquarters, Rikenel, Montpellier, Gloucester GL1 1LY. You can email us at 2gether.comms@glos.nhs.uk or call us on 01452 891604.

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Mental Health and the Law

Information for service users and carers

2gether
Making life better

Compulsory Admission under the Mental Health Act

Nearly all service users receiving treatment in 2gether's inpatient units are informal or voluntary patients. This means they agree to go into hospital for treatment.

However, there are times when individuals refuse to receive treatment they need. Sometimes this is because they are so unwell they do not realise they could hurt themselves or someone else if they do not receive appropriate care and treatment. This may result in compulsory admission to hospital against their will.

The Mental Health Act has strict rules relating to compulsory admission to hospital. Two doctors must agree that compulsory detention is necessary and an Approved Mental Health Professional – usually a Social Worker – makes the application for admission.

Most admissions fall under Sections 2 and 3 of the Mental Health Act 1983:

Section 2:

- Compulsory detention for up to 28 days for assessment and treatment
- Patients can appeal to a Mental Health Review Tribunal within first 14 days
- Nearest relative can order discharge
- Final decision rests with Responsible Clinician who is usually a doctor

Section 3:

- Compulsory detention for treatment for up to six months
- Section can be renewed for a further six months and annually thereafter
- Admission must be discussed with the nearest relative
- Nearest relative can order discharge
- Patient can appeal to Mental Health Review Tribunal

You may also come across the following sections of the Mental Health Act 1983:

Section 17:

- Permits Responsible Clinician to grant inpatients periods of leave from the ward

Section 18:

- Provides powers to recall patients who are absent without leave from the hospital

Section 117:

- Used on discharge to ensure people detained under Section 3 receive appropriate aftercare

Community Treatment Orders (CTOs)

A Community Treatment Order (CTO) authorises the discharge of an individual from hospital and their treatment under supervision in the community.

The CTO sets out how the person is cared for and treated in the community under Supervised Community Treatment. It also includes conditions they must observe to stay well in the community, including:

- Making themselves available for medical examination when required
- Allowing an independent doctor – known as a Second Opinion Approved Doctor – to provide a certificate authorising treatment if necessary

The Responsible Clinician and Approved Mental Health Professional set the conditions of the CTO in consultation with the service user and care team. The care team will consult and involve carers if the service user agrees.

Under a CTO, the Responsible Clinician can recall the individual to hospital for up to 72 hours if necessary – for example if they do not follow the conditions of their treatment in the community or experience a relapse.

- A CTO can be renewed for a further six months and annually thereafter
- Nearest relative can order discharge
- Patient can appeal to Mental Health Review Tribunal

Advance Statements, Advance Directives and Rainy Day Care Plans

Service users can set out detailed preferences and instructions regarding their care and treatment in case they lose the capacity to express their wishes in future.

These preferences and instructions are contained in Advance Statements, Advance Directives or Rainy Day Care Plans.

Clinicians may help service users to write these statements and plans that can include:

- Information about an individual
- Details of how an individual is affected when they are unwell
- Instructions to refuse certain medical procedures
- Actions required in particular circumstances

Service users can amend or revoke an Advance Statement or Advance Directive at any time provided they have capacity to do so.