

Provision of Information to Patients Subject to The Mental Health Act and to Their Nearest Relatives Policy

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Applies to:	Inpatient staff, mental health wards, MHA administrators MH community staff who care coordinate patients subject to a CTO Approved Clinicians/Responsible Clinicians

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1. INTRODUCTION

- 1.1 The Trust is committed to ensuring all patients subject to The Mental Health Act 1983 (the Act) receive information relating to their legal status, as required by the Act. The Trust acknowledges that the provision of information is not just a statutory duty but is an important part of the care provided to patients and their family/carers.

2. PURPOSE AND RATIONALE

- 2.1 Policy and practice in this area has developed over time, and guidance appears in other policies (i.e. CTO policy, Tribunal policy), but there has never been an over-arching policy. Audit (in 2017) has shown that practice is not consistent Trustwide, and that there is a need for a policy and practice guidelines.
- 2.2 This policy applies to all staff who work with patients subject to The Mental Health Act (both in hospital and in the community) including temporary, locum, bank and agency staff.

3. POLICY STATEMENT

- 3.1 The aim of this policy is to:
- Standardise practices and processes of providing information
 - Clarify and provide guidance to staff responsible for delivering the information
 - Provide a framework to staff on the information that should be given to patients subject to the Act and their nearest relatives
 - Identify who should deliver this information and the expected frequency of the delivery of information.

4. DEFINITIONS

- 4.1 **Mental Health Act 1983 (MHA)**- the legal framework for compulsorily treating people with mental health conditions where it is in the interests of their health or safety or the safety of others to do so, alongside the safeguards required to protect their rights while receiving appropriate treatment..

4.2 Hospital Managers (HM)

Hospital Managers have a central role in operating the provisions of the MHA. In NHS Foundation Trusts, the Trust itself is defined as the 'Managers'. It is the Hospital Managers who have the power to detain patients who have been admitted under the Act and who have the key responsibility for ensuring that the requirements of the Act are followed.

- 4.2.1 For the most part, hospital managers do not have to perform their functions personally, e.g. by decision of the board of an NHS trust, but may delegate them to officers, i.e. members of their staff), and, in some cases, to other people. See the Trust's "Scheme of Delegation of Hospital Managers' Functions" for details.

4.3 **Responsible Clinician (RC)**

The Responsible Clinician is the approved clinician with overall responsibility for a patient's case. Certain decisions (such as renewing a patient's detention or placing a patient on a Community Treatment Order (CTO)) can only be taken by the responsible clinician.

4.4 **Patient**

The MHA uses 'patient' to mean a person who is, or appears to be suffering from mental disorder. This sometimes means the Act uses 'patient' where another term (like 'service user' or 'client') would almost certainly be used in practice.

4.5 **Nearest Relative (NR)**

People described in the Act as 'nearest relatives' have various rights in relation to patients who are – or might be – subject to compulsory measures under the Act. For the purposes of the Act it may not be the same as the patient's closest relative, their next of kin or carer.

- 4.5.1 Patients do not necessarily have a nearest relative. Even if they do, it may not always be easy to identify accurately who that person is. The legislation, and this policy, recognises these difficulties. When there is a requirement to consult, inform or notify nearest relatives, the Act and the regulations typically refer to 'the person (if any) who appears to [the person in question] to be the nearest relative'. When there is doubt about the identity of a nearest relative, staff must consult with the MHA administration team.

4.6 **Community Patients**

Patients subject to a Community Treatment Order (CTO), including during any period of recall to hospital. This policy refers to 'CTO' and 'CTO patients', to avoid confusion with the large majority of patients receiving healthcare services in the community who are not subject to any special measures under the Act.

4.7 **Independent Mental Health Advocates (IMHAs)**

IMHAs are a statutory role (provided under sections 130A to 130D). The IMHA service is commissioned by the Local Authority. The objective of an IMHA is to provide support and represent the personal views of the patient. IMHAs may be involved in providing patients with information on their rights, medication and any restrictions or conditions to which they are subject.

4.8 **First Tier Tribunal (Mental Health) (FTT (MH))**

The FTT (MH) is an independent judicial body. Its main purpose is to review the cases of detained, conditionally discharged, and CTO patients under the Act and to direct the discharge of any patients where it thinks it appropriate. It also considers applications for discharge from guardianship. The Tribunal provides a significant safeguard for patients who have had their liberty curtailed under the Act.

5 SECTION 132, 132A AND 133 INFORMATION

- 5.1 Those with responsibility for patient care should ensure that patients are reminded from time to time of their rights and the effects of the Act. It may be necessary to give the same information on a number of different occasions or in different formats and to check regularly that the patient has fully understood it. Information given to a patient who is unwell may need to be repeated when their condition has improved. It is helpful to ensure that patients are aware that an IMHA can help them to understand the information.
- 5.2 The requirements above about the frequency of the provision of information to patients are set out in Appendix A.
- 5.3 Particular and relevant information should be given to each patient as part of the admissions process to ensure that the patient understands their situation and their legal rights. Information must be given orally and in writing, in an appropriate format e.g. Braille and in a language that the patient understands.
- 5.4 The provision of information should not be referred to as 'reading the patient their rights.' This is a phrase associated with the criminal justice system, and does not accurately reflect the process of ensuring a patient understands their situation in hospital, or whilst subject to a CTO.
- 5.5 Section 132 (detained inpatients) and 132A (Community Treatment Order patients) require the Trust to take such steps as are practicable to ensure a patient subject to the MHA understands:
- Under which provision of the MHA the patient is detained and the effect of that provision;
 - What rights of applying to the FTT(MH) and the Hospital Managers are available to them in respect of their detention under that provision.
- 5.6 To this end, the information which **must** be imparted is:
- Which provision of the Act the patient is detained under or on CTO and the effect of those provisions;
 - The rights (if any) of their Nearest Relative to discharge them (and what can happen if their responsible clinician does not agree with that decision);
 - The effect of the CTO(if applicable), including the conditions which they are required to keep to and the circumstances in which their responsible clinician may recall them to hospital; and
 - The role of the IMHA and how to obtain their help should they require it.
- 5.7 The information which **should** be imparted is:
- The reasons for their detention or CTO. This should include the essential legal and factual grounds for their detention or CTO. For the patient to be able to effectively challenge the grounds for their detention or CTO, should they wish, they should be given the full facts rather than simply the broad reasons. This should be done promptly and clearly;

and the patient should be told they may seek legal advice and assisted to do so if required.

- The maximum length of the current period of detention or CTO.
- That their detention or CTO may be ended at any time if it is no longer required or the criteria for it are no longer met;
- That they will not automatically be discharged when the current period of detention or CTO ends;
- That their detention or CTO will not automatically be renewed or extended when the current period of detention or CTO ends.
- For CTO patients- The reasons for being recalled, and the reasons for the revocation of a CTO.
- Where the section of the Act under which the patient is being detained changes, they must be provided with the above information to reflect the new situation. This also applies where a detained patient becomes a CTO patient, where a CTO patient's community treatment order is revoked, or where a conditionally discharged patient is recalled to hospital.

- 5.8 Unless the patient objects the Hospital Managers must also ensure the nearest relative (if known) is provided with a copy of any information given to the patient at the same time or within a reasonable time afterwards.
- 5.9 The MHA administration team will be responsible for ensuring a letter is sent to the nearest relative within **7 days** of becoming aware that a patient has been made subject to the MHA. The letter will be copied to the patient and the ward staff or community staff to be retained in the patient notes.
- 5.10 Section 133 provides a duty for the Hospital Managers to inform the NR of discharge (including discharge under s.17A) and this is to be given at least seven days before the discharge if practicable. To facilitate this it will be necessary for the patients' RC to inform the MHL Office of the planned discharge where possible.
- 5.11 The requirement to inform the NR does not apply if the patient requests that information is not sent. The NR may also request that information is not sent to them regarding their relative. (See section 11 below for further information about the provision of information to nearest relatives)

5. COMMUNICATION WITH PATIENTS

- 6.1 Effective communication is essential in ensuring appropriate care and respect for patients' rights. It is important that the language used is clear and unambiguous and that people giving information check that the information that has been communicated has been understood.
- 6.2 Wherever possible, patients should be engaged in the process of reaching decisions which affect their care and treatment under the Act. Consultation with patients involves helping them to understand the information relevant to decisions, their own role and the roles of others who are involved in taking the decision. Ideally decisions should be agreed with the patient. Where a decision is made that is contrary to the patient's wishes, that decision and the

authority for it should be explained to the patient using a form of communication that the patient understands.

- 6.3 All reasonable steps should be undertaken to overcome barriers to effective communication, which may be caused by any of a number of reasons, including:
- If the patient's first language is not English;
 - If there are technical terms or jargon;
 - If the patient had difficulty in maintaining their attention for extended periods;
 - If the patient has a hearing or visual impairment or have difficulty in reading or writing.
 - If the patient's cultural background is significantly different from that of the person speaking to them;
 - Their age. Children and young people for example will require information to be explained in a way that that they can understand and in a format appropriate for their age.
- 6.4 Those with responsibility for the care of patients need to identify how communication difficulties affect each patient individually, so that they can assess the needs of each patient and address them in the most appropriate way. The Trust's policy/procedure about the use of translators/interpreters must be followed.
- 6.5 Independent mental health advocates (IMHAs) engaged by patients can be invaluable in helping patients to understand the questions and information being presented to them and in helping them to communicate their views to staff.
- 6.6 Where an interpreter is needed, every effort should be made to identify who is appropriate to the patient, given the patient's gender, religion, language, dialect, cultural background and age. The patient's relatives and friends should only exceptionally be used as intermediaries or interpreters. Interpreters (both professional and non-professional) must respect the confidentiality of any personal information they learn about the patient through their involvement.

7. INFORMATION ABOUT RECALL FOR CTO AND CONDITIONALLY DISCHARGED PATIENTS

- 7.1 Where a patient is to be recalled to hospital, the RC should give (or arrange for the patient to be given) oral reasons for the decision before the recall. The patient may nominate another person who they wish to be notified of the decision.
- 7.2 Where a conditionally discharged patient is to be recalled to hospital, a brief verbal explanation of the Secretary of State's reasons for recall must be provided to the patient at the time of recall unless there are exceptional reasons why this is not possible, e.g. the patient is violent or too distressed. The Secretary of State's warrant will detail the reasons. The patient should also receive a full explanation of the reasons for his or her recall within 72

hours after admission, and both written and oral explanations should be provided.

8. INFORMATION ABOUT CONSENT TO TREATMENT

8.1 Patients must be told what the Act says about treatment for their mental disorder. In particular they must be told:

- The circumstances (if any) in which they can be treated without their consent – and the circumstances in which they have the right to refuse treatment;
- The role of second opinion appointed doctors (SOADs) and the circumstances in which they may be involved; and
- The rules on electro-convulsive therapy (ECT) and medication administered as part of ECT).

9. INFORMATION ABOUT SEEKING A REVIEW OF DETENTION OR CTO

9.1 Patients must be informed of their rights to be considered for discharge, particularly:

- Of the right of the responsible clinician and the hospital managers to discharge them (and, for restricted patients, that this is subject to the agreement of the Secretary of State for Justice);
- Of their right to ask the hospital managers to discharge them;
- That the hospital managers must consider discharging them when their detention is renewed or their CTO is extended;
- Of their rights to apply to the Tribunal;
- Of the rights (if any) of their nearest relative to apply to the Tribunal on their behalf;
- About the role of the Tribunal; and
- How to apply to the Tribunal.

9.2 Staff must ensure that patients are offered assistance to request a Hospital Managers' Hearing or make an application to the Tribunal, and that the applications are submitted without delay. Patients should also be told:

- How to contact a suitably qualified legal representative (and should be given assistance to do so if required);
- That free legal aid may be available; and
- How to contact any other organisation which may be able to help them make an application to the Tribunal e.g. Independent Mental Health Advocacy.

9.3 It is particularly important that patients on CTO who may not have daily contact with people who could help them make an application to the Tribunal are informed and supported in this process.

9.4 CTO patients whose orders are revoked, and conditionally discharged patients recalled to hospital, must be told that their cases will be referred automatically to the Tribunal.

10. INFORMATION ABOUT THE CARE QUALITY COMMISSION (CQC)

- 10.1 Patients must be informed about the role of the CQC and of their right to meet inspectors/reviewers appointed by the CQC in private. Patients should be told when the CQC is to visit the Trust (if that is known) and be reminded of the CQC's role as required.
- 10.2 Patients may also make a complaint direct to the CQC. Information about this is available on CQC's website:
<http://www.cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act>

11. INFORMATION FOR NEAREST RELATIVES

- 11.1 When a patient detained under the Act or on CTO is given information, they should be told that the written information will also be supplied to their nearest relative, so that they have a chance to discuss any concerns and object to the sharing of some or all of this information. Information provided to the nearest relative should be given at the same time as it is given to the patient, or within a reasonable time afterwards.
- 11.2 The Nearest Relative should also be told of the patient's discharge from detention or CTO (where practicable), unless either the patient or the Nearest Relative has requested that information about discharge should not be given. This includes discharge from detention onto CTO. If practicable, the information should be given at least seven days in advance of the discharge.
- 11.3 In addition, regulations require nearest relatives to be informed of various other events, including the renewal of a patient's detention, extension of CTO and transfer from one hospital to another.
- 11.4 These duties to inform nearest relatives are not absolute. In almost all cases, information is not to be shared if the patient objects.
- 11.5 There will occasionally be cases where these duties do not apply because disclosing information about the patient to the nearest relative cannot be considered practicable, on the grounds that it would have a detrimental impact on the patient that is disproportionate to any advantage to be gained from informing the nearest relative. This would therefore be a breach of the patient's right to privacy under the European Convention on Human Rights. The risk of this is greatest where the nearest relative is someone whom the patient would not have chosen themselves.
- 11.6 Before disclosing information to nearest relatives without a patient's consent, the person concerned must consider whether the disclosure would be likely to:
- Put the patient at risk of physical harm or financial or other exploitation;
 - Cause the patient emotional distress or lead to a deterioration in their mental health; or
 - Have any other detrimental effect on their health or wellbeing, and if so whether the advantages to the patient and the public interest of the

disclosure outweigh the disadvantages to the patient, in the light of all the circumstances of the case.

- 11.7 The MHA administration team will be responsible for ensuring a letter is sent to the Nearest Relative.

12. COMMUNICATION WITH OTHER PEOPLE NOMINATED BY THE PATIENT

- 12.1 Patients may want to nominate one or more people who they would wish to be involved in, or notified of, decisions related to their care and treatment.

- 12.2 Patients may nominate an independent mental health advocate, another independent advocate or a legal professional. But they may also nominate a relative, friend or other informal supporter.

- 12.3 The involvement of such friends, relatives or other supporters can have significant benefits for the care and treatment of the patient. It can provide reassurance to the patient, who may feel distrustful of professionals who are able to impose compulsory measures on them, or are relatively unfamiliar and unknown to the patient. People who know the patient well can provide knowledge of the patient and perspectives that come from long-standing and intimate involvement with the patient prior to (and during) their involvement with mental health services. They can provide practical assistance in helping the patient to convey information and views and may have knowledge of advance decisions or statements made by the patient

- 12.4 Professionals should normally agree to a patient's request to involve relatives, friends or other informal supporters. They should tell the patient whenever such a request will not be, or has not been, granted. Where a patient's request is refused, it is good practice to record this in the patient's notes, giving reasons for the refusal. It may not always be appropriate to involve another person as requested by the patient, for example where:

- Contacting and involving the person would result in a delay to the decision in question that would not be in the patient's best interests;
- The involvement of the person is contrary to the best interests of the patient (where the patient lacks the capacity to make a nomination); or
- That person has requested that they should not be involved.

- 12.5 Professionals should also take steps to find out whether patients who lack capacity to take particular decisions for themselves have an attorney or deputy with authority to take the decision on their behalf. Where there is such a person, they act as the agent of the patient, and should be informed in the same way as the patient themselves about matters within the scope of their authority.

- 12.6 Patients may also have advance statements in place that list the names of other people who they wish to be consulted and involved in their care. The multi-disciplinary team should check whether an advance statement is in

place, and should provide assistance to patients in making advance decisions or statements where the patient has the capacity to do so.

13. INVOLVEMENT OF CARERS

- 13.1 Carers are key partners with health and care services and local authorities in providing care, especially for relatives and friends who have mental disorders (Care Act, 2014). In many instances, especially when a patient is not in hospital, the patient's carers and wider family will provide more care and support than health and social care professionals. It is important for professionals to identify all individuals who provide care and support for patients, to ensure that health and care services assess those carers' needs and, where relevant, provide support to meet them.
- 13.2 The Code recommends that unless there are good reasons to the contrary, patients should be encouraged to agree to their carers being involved in decisions under the Act and to them being kept informed. If patients lack capacity to consent to this, it may be appropriate to involve and inform carers if it is in the patient's best interests – although that decision must always be made in the light of the specific circumstances of the case.
- 13.3 In order to ensure that carers can, where appropriate, participate fully in decision-making, it is important that they have access to:
- Practical and emotional help and support to help them to participate; and
 - Timely access to comprehensive, up-to-date and accurate information.
- 13.4 This applies equally to children, young people or individuals with a learning disability who are supporting parents who have mental disorder. In considering the kind and amount of information which young people (especially young carers) should receive about a parent's condition or treatment, the people giving the information will need to balance the interests of the child against the patient's right to privacy and their wishes and feelings. Any such information should be appropriate to the age and understanding of the child or young person.
- 13.5 Even if carers cannot be given detailed information about the patient's case, where appropriate they should be offered general information which may help them understand the nature of mental disorder, the way it is treated, and the operation of the Act.
- 13.6 If carers request that the information they provide is kept confidential, this should be respected and recorded in the patient's notes. A carer should be asked to consent to such information being disclosed. Where a carer refuses to consent, professionals should discuss with the carer the benefits of sharing information in terms of patient care and how their concerns could be addressed.

14. INFORMATION FOR PATIENTS' CHILDREN

- 14.1 In considering the kind and amount of information which children and young people (especially young carers) should receive about a parent's condition or

treatment, the people giving the information will need to balance the interests of the child or young person against the patient's right to privacy and their wishes and feelings. Any such information should be appropriate to the age and understanding of the child or young person and provided in an appropriate format to facilitate their understanding.

15. INFORMATION FOR INFORMAL HOSPITAL PATIENTS (THOSE NOT SUBJECT TO THE MHA)

- 15.1 Although the Act does not impose any duties to give information to informal patients, these patients should have their legal position and rights explained to them.
- 15.2 Informal patients should be provided with relevant information (e.g. about how to make a complaint and consent requirements for treatment).
- 15.3 Informal patients must be allowed to leave if they wish, unless they are to be detained under the Act. Both the patient and, where appropriate, their carer and advocate should be made aware of this right with information being provided in a format and language the patient understands. Local policies and arrangements about movement around the hospital and its grounds must be clearly explained to the patients concerned. Failure to do so could lead to a patient mistakenly believing that they are not allowed to leave hospital, which could result in an unlawful deprivation of their liberty and a breach of their human rights.

16. PROCESS OF PROVIDING INFORMATION

- 16.1 As soon as a patient is detained under, or made subject to, the MHA 1983 attempts must be made to provide them with relevant information orally and in writing, unless it is not practicable at that time.
- 16.2 It is the responsibility of the Ward Manager (or team manager for CTO patients) to ensure that any relevant patient has been provided with appropriate information in accordance with this policy. Information should be given to a patient by a member of staff who is competent to do it.
- 16.3 The S132 screen in RiO must be completed as soon as practicable. The screen allows for a record to be made of the information provided and the patient's level of understanding.
- 16.4 If the member of staff providing the information decides it is not possible to provide the information immediately (i.e. if the patient lacks the capacity to understand, or they are too agitated), further attempts must be made and recorded on a regular basis. See Appendix A for details.
- 16.5 When providing information to the patient in writing there are standard leaflets available for each section. Copies should be available on the ward. The MHA administration team Office will be able to provide these leaflets in other formats and languages on request.

16.6 Where the patient is being made subject to a CTO the Responsible Clinician (or nominated deputy) must ensure the relevant information is explained to them prior to discharge from the ward. The MHA administration team will write to the patient and their nearest relative to provide them with a written copy of the information.

17. VOTING RIGHTS

17.1 Voluntary patients on medical wards are not subject to any restrictions on their voting rights. Being in-patient does not inherently change an individual's right to vote. Moreover, patients detained under the MHA, including those on community treatment orders, have the same right to vote as anyone else.

17.2 Patients who are entitled to vote: all patients on civil sections (part 2) of the MHA and prisoners remanded to hospital under the MHA on Sections 35, 36 or 48.

17.3 Patients with a condition that may impair their capacity to vote: These individuals should be asked if they want to register to vote/want to vote and additional support offered to support them doing so. If they require assistance, they must be allowed to express their own intention of how they cast their vote. It is important that a staff member, advocate, relative or carer does not influence their voting choice. A lack of mental capacity is not a legal incapacity to vote.

17.4 Patients who are not entitled to vote: patients detained after having been convicted of committing a criminal offence and been ordered to hospital by the courts, and are subject to:

- a hospital order under Sections 37, 38, 44 or 51(5) or,
- a hospital direction under Section 45A, 46, 47, or
- an order under Section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964, or
- an order under Section 6(2) (a) or Section 14 (2) (a) of the Criminal Appeal Act 1968.

17.5 Further information can be found at this link:

<http://www.rcpsych.ac.uk/pdf/RCPsych%20guidance%20on%20voting%20rights%20for%20in-patients.pdf>

18. POST

18.1 Post sent to a patient detained in a hospital may not be inspected, opened or withheld under any circumstances. Specific provisions in relation to this are made for special (high secure) hospitals only. However, if either a detained or informal patient is sent articles of potential danger, such as weapons, or explosives through the mail, section 3(1) of the Criminal Law Act 1967 and the common law provide authority for hospital staff to take reasonable measures to prevent the patient receiving or keeping the article in his / her possession.

- 18.2 If staff have any suspicions or concerns that a patient's correspondence may contain an article of potential danger, they should initially speak to the patient and try to gain their consent in disclosing the package and/or contents to staff.
- 18.3 If the patient refuses to disclose the article staff should refer to the Search Policy and contact their senior manager for further advice.
- 18.4 Section 134(1)(a) authorises the withholding of post sent by a detained patient if the person it is addressed to has requested that communications by the patient should be withheld.
- 18.5 This power only relates to detained patients and no restrictions can be applied to informal patients' post.
- 18.6 The post of a detained patient may only be withheld if the person to whom it is addressed has requested this in writing to the Hospital Managers, the Responsible Clinician in charge of the patient's treatment or the Secretary of State.
- 18.7 The written request should be passed scanned into RiO, and an alert should be recorded.
- 18.8 There is no power to open and inspect any outgoing post from a patient. Staff may check the address on the package only.
- 18.9 A record must be made of any post withheld, and the patient must be informed

19 DUTIES AND RESPONSIBILITIES

- 19.1 The Mental Health Legislation Committee is responsible for ensuring the requirements of this policy are adhered to.
- 19.2 The IQIS Group is responsible for escalating issues to the Mental Health Legislation Committee for investigation and monitoring the use of this policy.
- 19.3 Ward managers, team managers and Responsible Clinicians are responsible for the implementation of the policy and in particular, for ensuring that patients are provided with their rights in accordance with the required processes as laid out within this policy.
- 19.4 It is the responsibility of all staff whose work involves patients subject to the MHA to ensure they are familiar with their individual responsibilities within this policy. Staff have a responsibility to report any issues relating to the implementation of this policy to the Mental Health Act administration team, via their line management and the incident reporting process, as appropriate.
- 19.5 The Mental Health Act Coordination Lead will ensure that the provision of patient information is covered within the Trust training program on Mental Health Law and that any learning requirements identified through the monitoring of this policy are included in future training programs.

- 19.6 The senior on-site member of the nursing staff or the nurse in charge on duty at the time the patient is placed on a section, or received on to the ward under a section, is responsible for ensuring that appropriate attempts are made to provide information both orally and in writing.
- 19.7 The application of this policy for community based patients lies with their appointed Care Coordinator and the Responsible Clinician (or nominated deputy).

20 MONITORING COMPLIANCE AND EFFECTIVENESS

20.1 Monitoring arrangements for compliance and effectiveness

Audits will be undertaken on the provision of information when deemed appropriate by the Mental Health Legislation Committee. Adherence to the procedural guidelines will be monitored.

20.2 Responsibilities for conducting the monitoring

The Chair of the Mental Health Legislation Committee will ensure that monitoring reports are timetabled within the reporting schedule and present on the appropriate agenda.

The Mental Health Legislation Committee will monitor procedural document compliance and effectiveness where they relate to the provision of information.

20.3 Methodology to be used for monitoring

Discussions of the following will be recorded within the MHL Committee minutes

- internal audits
- complaints monitoring
- incident reporting and monitoring via DATIX
- new significant risks to be added to the risk register.

20.4 Frequency of monitoring

- half yearly reports to the Mental Health Legislation Committee
- half yearly, progress report of the MHLC annual work programme

20.5 Process for reviewing results and ensuring improvements in performance occur.

Any audit results will be discussed at the Mental Health Legislation Committee who will identify good practice, any shortfalls, action points and lessons learnt. The outcome of the Audit and any change in policy will be presented to the Senior Managers Operational Group who will be responsible for ensuring improvements, where necessary, are implemented.

21 REFERENCES, ACKNOWLEDGEMENTS AND ASSOCIATED DOCUMENTS

References

MHA '83 Code of Practice – TSO 2015

Reference Guide to the MHA 1983 – TSO 2015

Jones, R 'The Mental Health Act Manual', 16th ed, Sweet and Maxwell.

Cross reference to other procedural documents

Scheme of Delegation of Hospital Managers' Functions

Community Treatment Order (CTO) Policy

First Tier Tribunal (Mental Health) Policy

All current policies and procedures are accessible in the policy section of the public website (on the home page, click on 'Policies and Procedures'). Trust Guidance is accessible to staff on the Trust Intranet.

22 APPENDICES

- 22.1 For the avoidance of any doubt the appendices in this policy are to constitute part of the body of this policy and shall be treated as such.

APPENDIX A Standards and timeframes for the provision of information.

APPENDIX B Aide Memoire for staff.

SOMERSET PARTNERSHIP NHS FOUNDATION TRUST
Broadway Health Park, Bridgwater, Somerset

MEMORANDUM	
<p>To: All Ward Managers (Mental Health) Tom Clifford Pauline Murphy</p> <p>cc: N Jackson – Deputy Service Director Kathy Doran Deputy Service Director Ethna Bashford – Service Director Nick Woodhead - Mental Health Act Coordination Lead MHA Administrators</p> <p>Date: 19 January 2018</p>	<p>From: Tim Young Head of Inpatient and Urgent Care Adult Mental Health and Learning Disabilities Directorate</p> <p>Ref: NW/TY</p>

Dear Ward Manager

Following on from the trust audit on Section 132 of the Mental Health Act: providing patients with information on the MHA, a recommendation was agreed to review the current standards for presenting patients with information on their MHA status. As such Nick and I have met and revised the current standards which will be incorporated into the new Section 132 policy. You will notice that within these revised standards the emphasis has moved from “reading patients their rights” to providing information about their MHA status until such point that staff are confident that the patient understands.

The revised standards and time frames are as follows:

- At the commencement of a patient’s detention under the MHA 1983 or when becoming subject to a Community Treatment Order (CTO) the patient must be presented with information about their MHA status.
- Where the patient is likely to regain capacity records should demonstrate that the patient is presented with information about their MHA status until the member of staff is confident that the patient understands.
- Where patients are unlikely to regain capacity records should reflect efforts to support the patient to understand their mental health status which should include a referral for an IMHA, where this is considered to be in the patient’s best interests.

- For patients subject to detention under Section 3, 37, 37(41), 38, 47/49, 48/49 patients must be presented with information about their MHA status until the member of staff is confident that the patient understands.
- For patients subject to a CTO patients should be presented with information about their MHA status at a minimum of 6 monthly intervals.
- Following any changes to treatment the patient must be presented with information about their MHA status.
- Following any significant deterioration in mental health presentation the patient must be presented with information about their MHA status.
- Following the extension/ renewal of detention the patient must be presented with information about their MHA status.
- When the patient is discharged from detention the patient must be presented with information about their informal status.

I hope that this will help provide some clarity around this area of the MHA and I would be grateful if you would discuss this with relevant staff involved in this process.

Many thanks.



Nick Woodhead
Mental Health Act Coordination Lead

Tim Young
Head of Inpatient and Urgent Care
Adult Mental Health

APPENDIX B

Aide Memoire for staff re S132

The managers of a hospital in which a patient is detained under this Act shall take such steps as are practicable to ensure that the patient understands—	Details
under which of the provisions of this Act he is for the time being detained and the effect of that provision	Which section has been applied or renewed. How long it may last. Cannot leave hospital unless granted S17 leave by RC, and the leave may be subject to conditions (i.e 'escorted' or time limited) Leaving without permission, or failing to return as required, means the person becomes 'AWOL', and may be returned by an AMHP, a police constable, any officer on the staff of the hospital, or any person authorised in writing by the hospital managers.
what rights of applying to a tribunal are available to him in respect of his detention under that provision	S2- can apply anytime during first 14 days of section S3- can apply once during any 'period' (i.e. 6 months, 6 months, then yearly) For forensic sections, see Tribunal policy. Explain process for applying to Tribunal. Patient will have a Tribunal after 6 months of detention if they do nothing. Provide the list of solicitors, and explain that there will be no cost involved due to legal aid. Do not recommend any particular solicitor or firm, even if the patient asks for a recommendation. We must remain completely impartial.
How they may be discharged from section (including restrictions on NR discharge)	RC can discharge at any time NR can order discharge, but must provide 72 hours' notice. During those 72 hours the RC can 'bar' the discharge by declaring that the patient would be a 'danger' to self or others if discharged. If that happens a hospital managers panel would be convened to check whether or not the RC was correct, and can order discharge. Tribunal can order discharge Hospital managers can order discharge, and patients can appeal to them as often as they like. The managers can decide not to hold a hearing if a patient makes multiple or frequent requests. Managers will hold a hearing every time a period of detention is renewed.

<p>Consent to treatment rules</p>	<p>Medical treatment can be given against wishes.</p> <p>Consent to treatment rules apply equally to S2 and S3 (i.e. treatment can be provided under a S2 just as it can under a S3)</p> <p>For first 3 months, medical treatment is authorised by (or under the direction of) the approved clinician in charge of treatment.</p> <p>After 3 months, the AC can only authorise treatment when the patient has capacity and is consenting. They complete form T2</p> <p>A Second Opinion Appointed Doctor (SOAD) must authorise any other treatment on a form T3.</p> <p>ECT different- always requires a certificate (no 3 month period without). A patient with capacity can refuse to have ECT, and that refusal cannot be overridden unless it is a situation of urgency.</p> <p>The AC will try not to 'force' treatment unless absolutely necessary. Just because they can do this, it doesn't mean they have to.</p>
<p>The existence of The Code of Practice</p>	<p>Patients must be told about The Code of Practice, and that a copy is available for them to borrow on the ward.</p>
<p>The role of Care Quality Commission, and how to see or contact a MHA Reviewer</p>	<p>Completely independent of the Trust</p> <p>CQC has the power to inspect the hospital, and a MHA Reviewer is allowed to interview patients in private. They can also have access to patients' notes. They can raise any problems they find directly with the hospital managers.</p> <p>Most inspections are unannounced, so we don't know when they will visit.</p> <p>Reviewers can:</p> <ul style="list-style-type: none"> Listen to your issues Raise problems with ward managers Help patients write letters or complain Check paperwork Publish reports on wards <p>They can't</p> <ul style="list-style-type: none"> Discharge patients Arrange patient transfers Offer medical advice Give legal advice Arrange leave for patients <p>Patients can contact CQC and ask to speak to a MHA reviewer on 03000 616161</p> <p>CQC can investigate complaints about the provision of care when the MHA is (or was) in force. CQC will usually expect the patient to have gone through the Trust's complaint</p>

	<p>process first. Details here http://www.cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act</p>
Correspondence whilst in hospital	We will not open any letters sent in to hospital, and we cannot stop any letters being sent unless the intended recipient has asked us to prevent things being sent.
The role of the Independent Mental Health Advocate (IMHA) and how to obtain their help should they require it.	<p>No role for IMHAs in the holding sections (S135, 136, 5(2) or 5(4).)</p> <p>All eligible patients must be offered the opportunity to see an IMHA.</p> <p>Referrals should be made for patients who lack the capacity to refer themselves.</p> <p>IMHAs can help patients to understand all of this (above and below) information, and can help them to exercise their 'rights' - i.e. accessing a Tribunal or hospital managers' hearing. They can accompany patients to 'ward rounds' or care planning meetings.</p> <p>They can help facilitate communication between patient and staff.</p>
Duty on hospital to provide nearest relative with information, and patient's ability to object to this.	We (via the MHA administrators) will provide all this information to the patient's nearest relative, unless the patient objects. Inform the MHA administrators about any objection from the patient, so that no letter is sent by mistake.
<p>For CTO patients:</p> <p>The effect of the CTO (if applicable), including the conditions which they are required to keep to and the circumstances in which their responsible clinician may recall them to hospital</p>	<p>Explain timescales of CTO (initially 6 months, renewable for 6 months, then yearly).</p> <p>Same appeal rights to Tribunal/hospital managers as a S3.</p> <p>Treatment cannot be 'forced'. Can only be given with the consent of the patient, or in their best interests if they lack capacity.</p> <p>Each condition must be explained to the patient.</p> <p>Patients must understand that a failure to comply with any condition does not mean that they will be automatically recalled. Recall can be considered if they fail to comply with one of the statutory conditions (seeing a SOAD, or seeing the professionals required at renewal), but otherwise a recall may only happen if they require treatment in hospital.</p> <p>Recall is by the RC only, and must be ordered in writing (see CTO policy for details of recall process)</p>