

Search Policy– Property and Individuals

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Search policy – property and individuals

1. Introduction

Whilst the Trust fully respects the rights of individuals and their need for privacy in reference to Article 8 of the European Convention on Human Rights (ECHR) it also has a duty to safeguard service users, staff and visitors whilst on its premises, therefore there will be occasions when it becomes a necessity to search service users and visitors in order to minimise the risk of harm.

Hospital staff should make conscious efforts to respect the privacy of service user's whilst balancing the need for maintaining a safe and therapeutic milieu. This encompasses the circumstances in which patients may meet or communicate with people of their choosing in private and the protection of their private property. This applies to people that are in hospital on a voluntary basis and those also subject to detention under the Mental Health Act 1983 (amended 2007).

This policy includes guidance and the nature of procedures that relate to personal searches, random and routine searching based on the Trust's statutory duty of care and health and safety regulations. The availability of some objects/substances may be harmful to people using Trust services, staff and visitors. All staff therefore have a duty to ensure that harm is minimised wherever and whenever possible by identifying, locating and excluding harmful objects/substances.

Such harmful objects/substances include, but are not limited to:

- Non-prescribed medication/alcohol.
- Illegal psycho active substances (drugs) i.e., Cannabis, Cocaine, Heroin.
- 'Legal Highs' i.e., Spice, Benzo Fury, [Ivory Wave](#), Eric 3, Diablo, Dimethocaine, 5IAI, MDAT, MXE, MKET.
- Weapons.
- All kinds of materials / apparatus for the purposes of smoking any substance or inhalation of gases.
- Or any other objects/substance which pose a risk and could be a source of harm to others. ([see our folder for details](#))

When undertaking any kind of search, staff are to ensure that this done with respect and that any disruption to property is minimised as much as possible. Staff must be aware that the process of a search can be upsetting and may cause distress to people using Trust services.

2. Purpose or aim

The purpose of this policy is to:

- To maintain a safe therapeutic environment.
- To maintain the security of patients, staff, the public and the premises.
- To fulfil the Trust's duty of care for those using and providing its services and obligation to abide by the Misuse of Drugs Act 1971.
- To reduce the number of violent, drug related incidents.
- To address the issue that other patients and staff are adversely affected by those who use illicit substances on Trust premises.
- All searches will be undertaken with due regard to and respect for the person's dignity.
- Searches should be necessary and proportionate to the identified risk and should involve the minimum possible intrusion into the person's privacy.

3. Scope

This Policy applies to all services provided by the Trust and those individuals that may be either informal or subject to formal detention under MHA 1983.

3.1 MHA 1983 Code of Practice Guiding Principles

Whilst the MHA does not provide specific authorisation for searching service users and their belongings, there is guidance given in the MHA 1983: Code of Practice (2015) (Paragraphs 8.33 – 8.43).

It is essential that all those undertaking functions under the MHA, understand the five overarching principles which should always be considered when making decisions in relation to care, support and treatment provided under the Act. The five principles are:

- Least restrictive option and maximising independence
- Empowerment and involvement
- Respect and dignity
- Purpose and effectiveness
- Efficiency and equity.

3.2 The Fundamental Standards of Care

The fundamental standards are those below which your care must never fall. These are the standards everybody has a right to expect when they receive care:

- Person centered care
- Dignity and respect
- Consent
- Safety
- Safeguarding from Abuse.

3.3 Confidentiality

In cases where police are requested to provide assistance with a search, then the patient's name will be divulged to them, along with the reasons for suspecting possession of a dangerous object or illegal substance. Other clinical details and case history will not be divulged unless they have a direct bearing on the need for a search, point to what might be found or its whereabouts or would indicate a risk to the police.

3.4 Legal basis for searching

Given that any decision to conduct a search may impact upon both detained and informal service users, the operational policy must define, as clearly as possible, the considerations and principles which apply to both categories. Different considerations may apply for informal patients with the capacity to consent to being searched and those without capacity.

3.5 Informal service users

Service users who are **not** detained under the MHA who have capacity to refuse consent should **not** be subjected to a search against their will. Such service users should be informed that if they are not prepared to undergo the search, a discussion will take place with the Consultant psychiatrist to consider –

- Whether compulsory detention of the service user under the MHA is justified and would satisfy the necessary clinical and legal criteria. If the service user is deemed to lack capacity, then a search must be considered within the framework of Mental Capacity Act (2005).
- Discharging the service user from hospital with appropriate support in a community setting.

Given the uncertainty surrounding the Common law power to conduct a search of a service user who is not detained under the MHA 1983 and the potential to engage Article 8 of the ECHR, a search of an informal patient may only be carried out with consent.

***Exceptionally**, a search of an informal patient may be carried out, without their consent providing there is justification under Article 8(2), in other words, “to take such steps as are **reasonably necessary** and **proportionate** to protect others from the **immediate risk of significant harm**. This applies whether or not the patient lacks the capacity to make decisions for himself.”

An immediate risk of significant harm means a risk that is ever present and it is considered necessary to conduct a search without delay. Significant harm in this context is likely to mean serious harm to physical or mental health.

If there is a reasonable belief that an informal service user lacks the capacity to consent to being searched and there is a reasonable belief that a search would be in the best interests of the patient, such a search could be carried out without his/her consent, provided that to do so would not conflict with the authority of a welfare attorney or deputy appointed by the Court of Protection.

3.6 Detained service users

The MHA Code of Practice 1983, (2008) sets out the position regarding detained service users that have the mental capacity to give consent. If they refuse consent, the Responsible Clinician (RC) can give authorisation for the search to proceed. Issues relating to Article 8 of the ECHR continue to apply. Consequently policy and procedure governing searches of detained patients must be capable of justification under Article 8(2). A breach of Article 8 is unlikely on the grounds that the procedure follows domestic law, based on the principles of proportionality and necessity. However, Article 8 will be engaged where detained patients are searched and the onus of justifying the interference rests with the Trust, including the justification of proportionality.

In the case of a detained patient without capacity, the principles in the MCA will also apply. However, it should be noted that, for a detained patient, the authority of an attorney or deputy appointed by the Court of Protection will be overridden by virtue of the patient being detained.

The Children’s Act (1989) provides protection for young people, anyone under the age of 18. Searching young people, while they are inpatients, should only be done when all other avenues of persuasion have been exhausted. Young people will only be searched if they are suspected of carrying or concealing articles that could be used to harm themselves or others. The parents/guardians of the young person must be informed of the search.

Staff working within acute adult inpatient areas, where young persons may be admitted, should seek advice from the Lead Nurse (Child protection) before undertaking searches.

4. Types of search

Personal Search – This should take place when there is a suspicion of harmful substances or object being contained within clothing or upon the person. See Search Procedure section 8.

Property Search – This should take place when there is a suspicion of harmful objects or substances within a room ward environment, the patient lockers and all patient belongings. See Search Procedure section 9.

Environmental Search – This would take place if an object/substance is thought to be present in a bedroom or the wider physical environment including the ward or the wider estate. It will involve relevant non –ward Trust staff, may involve the police and may involve the consent of the landlord (if appropriate). See Search Procedure section 9.

Community Teams and Clinical Hubs – Where staff have a reasonable suspicion that a patient may be carrying a weapon of any sort, they are entitled within this policy to ask the individual to show the contents of their pockets or bags. Patients found carrying weapons must be asked to leave.

In all four types of search, illegal items such as firearms must be reported to the police immediately. Consent to report to the police must be aimed at but when not possible see [“Confidentiality – disclosures without consent”](#). Other items found such as a single cannabis splif or a penknife should be given a proportional response, eg. a family member present agrees to take the item home with them.

5. Roles and responsibilities

The Trust has a duty to keep staff and people using services safe and this will include a risk assessment around items of personal property that may affect this duty.

Admitting Nurse will take an inventory of personal property and valuables (excluding clothing) risk assessing the items and identifying those which may not be permitted to enter the care environment. A receipt will be given for any items taken into safe keeping.

Ward manager has a duty to ensure that property and valuables given into the care of the ward are stored according to relevant financial procedures where appropriate.

Staff have a duty to assess the mental capacity of an individual in relation to, or decision about, the care and custody regarding their personal property until the relatives and carers can take those items away to safety or the person regains capacity.

Staff should ensure they are familiar with the detail of the Search procedure. See Section 9

Once any search has been undertaken it should be recorded on the person’s RiO record giving the reasons for the search and its outcome. If the result is that a contraband item is found then an online incident form should be completed.

6. Training

All staff within secure services involved in the undertaking of searches must receive appropriate training with refresher training every 2 years in line with Training Plans.

All other clinical staff should refer to the procedure as a guide to conducting a search and if required contact the Practice Development Nurse for Violence Reduction for support and advice.

7. Monitoring or audit

Each search event should be reviewed by the clinical team; anything relevant relating to patients should be recorded in RiO

Any relevant learning points should be shared with the team and recorded on the team meeting minutes.

Any serious incident arising from searches should be discussed at the group reviewing serious untoward incidents within directorates, if necessary an RCA will be conducted.

Any post search review that indicates a need to reconsider the contents of this policy should be raised with the Trust Policy Officer, who will in turn advise the relevant policy authors.

Internal Audit could consider search outcomes when inspecting units, wards or hospitals.

Serious search incidents will be reported to the Quality and standards Committee via the Patient Safety Systems team.

8. References

[European Convention on Human Rights](#)

[Mental Health Act – Code of Practice](#)

9. Appendices

[Confidentiality – disclosures without consent procedure](#)

[Procedure for searching service users and property](#)

[Posters](#)

[Personal and Property searches – Disclaimer Form](#)

[Search Record Form](#)

Version History				
Version	Date	Revision description	Editor	Status
1.0	22.03.2015	Initial review of previous procedure and reformatted into new template	AM	Draft
2.0	16/06/2017	Administrative review	Head of Nursing - In-patients	Approved
2.1	09/01/2018	Expiry date extended to 31/03/2018	Head of Nursing - In-patients	Approved
2.2	11/06/2018	Julie Kerry agreed a 12 month extension to the policy whilst the Restrictive Practice Reduction workstream progresses as is likely to include a specific work stream to address searching. Small number of administrative changes (spelling and grammatical) and deletion of a paragraph relating to a definition of 'searching of patient records'.	Head of Nursing	Approved
2.3	03/09/2019	Extended until March 2020	JK Nursing Director	Approved