

Mental Health Act Policy

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Introduction

Avon and Wiltshire Mental Health Partnership NHS Trust (AWP) will ensure that service users experience high quality care, treatment and support that meets their needs and protects their rights.

(Care and welfare of people who use services CQC Regulation 9; Outcome 4)

The 1983 Mental Health Act was amended by the 2007 Mental Health Act.

The purpose of the policy is to support staff in the effective implementation of the Mental Health Act and Code of Practice, to ensure service users' rights are upheld and that staff act in the service user's best interests at all times.

1. Purpose or aim

The purpose of the policy is to support staff in the effective implementation of the Mental Health Act, to ensure service users detained under the Act receive care and treatment lawfully and that they are able to exercise their rights at all times.

The policy sets out the arrangements for Mental Health Act, sets out general principles and processes for Mental Health Act reporting and performance arrangements, defines the training requirements for the Mental Health Act, and sets out the Trust Hospital Managers Scheme of Delegation (in Appendix 1).

The Trust is required to deliver services to the people it serves within the legal framework of the [Mental Health Act](#) and in accordance to the [Mental Health Act Code of Practice \(2015\)](#) and guidance.

The Policy will uphold the Guiding Principles as described in Chapter 1 of the Code of Practice (2015).

There is an expectation that Registered Practitioners will maintain and be able transfer competency across services, in this core area of their practice. In addition Practitioners will be able to apply the Guiding Principles of the Act whilst they execute their duties.

The Trust will provide services that meet the Quality and Safety Outcomes required by the Care Quality Commission and in particular the Outcomes (2, 4, 7, 18, and 19)

The Policy will meet the requirements of the Human Rights Act (1998) and the Equalities Act (2010).

2. Scope

Adherence to the Act and the Mental Health Act Code of Practice will be supported in AWP through adherence to clear and robust supervision arrangements as outlined in the Trust supervision policy.

This Policy applies to all AWP staff working with individuals with mental health problems.

Full details of practice guidance and Procedures are accessible via hyperlinks within this document to the [Mental Health Act pages of Ourspace](#).

This policy applies to all staff (including bank and agency staff) and volunteers working with adults in the Trust.

3. Definitions

The term 'patient' is used throughout to reflect the language of the Code but terms such as 'community patient' or 'service user' may be preferred locally.

When the Code refers to "children" it means people under the age of 18.

4. Policy description

4.1 The Relationship between the MCA and the Mental Health Act

The Relationship between the MCA and the Mental Health Act

In deciding on the detention of a patient who lacks capacity, and whether the Mental Health Act or Deprivation of Liberty Safeguards should be applied, consideration should be made as to what is the least restrictive method of detention in the particular case, having taken into account all the relevant factors. Further guidance on this issue is contained in the Mental Health Act Code of Practice [2015], Chapter 13 Mental capacity and deprivation of liberty.

For patients who are detained under the Mental Health Act (part IV), the consent to treatment provisions contained in Part IV will 'trump' the provisions of the Mental Capacity Act in the areas covered in Part IV.

For all other patients who lack capacity, any decisions taken with regard to care or treatment are governed by the Mental Capacity Act. This includes detained patients where the care and treatment under consideration is not covered by the Mental Health Act.

4.2 The Principles of the MHA Code of Practice

The Code provides statutory principles that professionals and others must use to inform their decision making.

There are five Guiding Principles – every decision about a patient under the Act should be guided by and tested against these principles.

All decisions must be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Mental Capacity Act 2005, the Human Rights Act 1998 and the equality Act 2010.

The principles inform decisions, they do not determine them. The weight given to each principle in reaching a particular decision will depend on the context.

The principles as a whole need to be balanced in different ways according to the particular circumstances of each individual decision.

The Mental Health Act states:

“In performing functions under this Act persons mentioned in subsection (1) (a) or (b) shall have regard to the Code [Code of Practice 2015]”. Section 118. This means that when reaching decisions, professionals must follow the advice of the Code or justify why they are not able to do so.”

If a circumstance arises when the care team believe there is justification for practicing outside of the Code of Practice, either the Associate Director of Governance, Quality and Regulatory Compliance, Associate Medical Director or Head of Social Care must be consulted and a decision will be made at that point to seek advice from AWP's Mental Health Act solicitors.

Purpose principle

Decisions under the Act must be taken with a view to minimising the undesirable effects of mental disorder, by maximising the safety and wellbeing (mental and physical) of patients, promoting their recovery and protecting other people from harm.

Least restriction principle

People taking action without a patient's consent must attempt to keep to a minimum the restrictions they impose on the patient's liberty, having regard to the purpose for which the restrictions are imposed.

Respect principle

People taking decisions under the Act must recognise and respect the diverse needs, values and circumstances of each patient, including their race, religion, culture, gender, age, sexual orientation and any disability. They must consider the patient's views, wishes and feelings (whether expressed at the time or in advance), so far as they are reasonably ascertainable, and follow those wishes wherever practicable and consistent with the purpose of the decision. There must be no unlawful discrimination.

Participation principle

Patients must be given the opportunity to be involved, as far as is practicable in the circumstances, in planning, developing and reviewing their own treatment and care to help ensure that it is delivered in a way that is as appropriate and effective for them as possible. The involvement of carers, family members and other people who have an interest in the patient's welfare should be encouraged (unless there are particular reasons to the contrary) and their views taken seriously.

Effectiveness, efficiency and equity principle

People taking decisions under the Act must seek to use the resources available to them and to patients in the most effective, efficient and equitable way, to meet the needs of patients and achieve the purpose for which the decision was taken.

5. Roles and responsibilities

5.1 Executive Director of Nursing and Quality

The Director of Nursing and Quality is the responsible Executive Director for the Mental Health Act and reports to the Trust Board in this area of responsibility.

5.2 Associate Director of Governance, Quality and Regulatory Compliance

The Associate Director of Governance, Quality and Regulatory Compliance provides Trust wide strategic leadership to ensure the Trust meets its obligations to comply with the Mental Health Act and Code of Practice.

5.3 Head of Social Care

The Trust Head of Social Care, as the Trust Mental Health Act Lead has responsibility for providing leadership, support and expert advice on safeguarding adults with regard to the Mental Health Act. Their duties include:

- Developing of policies, systems and the annual Trust work plan for the MHA
- Annual reporting to the Board
- Review of CQC MHA inspection reports and delivery of actions
- Lead manager for MHA in the Trust Mental Health Legislation work stream group, and for working with local AMHP services, and working and reporting to Regulators and Commissioners on MHA practice in the Trust

The Head of Social Care is expected to give robust, consistent expert advice in partnership with other specialist senior colleagues, reinforcing the need to deliver high quality safe services in line with legislation and best practise, and ensuring learning from QIP's.

5.4 Delivery Units

All delivery unit management teams are responsible for:

- MHA practice and compliance with the related policy, procedures and standards in their area of responsibility
- Ensuring that all staff know how to access Trust-wide policy from the Board Library and that material changes to Trust-wide policy and new policies are brought to the attention of all affected staff
- Clinical Leads will ensure that the standards of the MHA and this Policy are incorporated into an annual programme of Audit.

5.5 Registered Practitioners

Registered Practitioners are required by their relevant codes of professional practice to ensure that the care and treatment provided to service users is lawful and recorded.

Registered Practitioners include those staff accountable to a Professional Regulator. Regulators include the General Medical Council, Nursing and Midwifery Council and the Health and Care Professions Council.

The list is indicative and does not mean to exclude other Regulators not listed.

5.6 Mental Health Legislation Administration Team

Provide effective access to appropriate advice and support in relation to administration processes for all mental health legislation that is easily available to all clinicians and practitioners in the Trust throughout office hours

Collate and prepare data in relation to all mental health legislation

The team will provide regular and effective performance data for all DUs and the Mental Health Legislation Group as required, using and developing appropriate data bases to capture and use information effectively.

The team must support the effective functioning of review and tribunal processes through effective booking and clerking processes

Ensure effective reporting to the Care Quality Commission in those reporting areas identified in [Regulations](#) 14, 16, 17 and 18.

The service will provide prompts to clinicians and practitioners with regard to time periods, e.g. section renewals, consent to treatment to enable adherence to legislation

The Mental Health Legislation Administration Team is responsible for:

- Providing appropriate advice and support in relation to administration processes for all mental health legislation, that is easily available to all clinicians and practitioners in the Trust throughout office hours
- Supporting the effective functioning of management review and tribunal processes through effective booking and clerking (where contracted for Tribunals) processes
- Ensuring effective reporting to the Care Quality Commission in those reporting areas identified in Regulations 14, 16, 17 and 18.
- Providing regular and effective performance data for all Delivery Unit's and the Trust Mental Health Legislation work stream group as required, using and developing appropriate data bases to capture and use information (RiO and bespoke databases)
- Providing prompts to clinicians and practitioners with regard to time periods, e.g. section renewals, consent to treatment to enable adherence to legislation

- Supporting the review of CQC MHA inspection reports and delivery of actions
- Undertaking ward based audits of MHA compliance, and providing feedback on the outcomes of audits and practice updates to wards and teams

5.7 All other Staff

Individual staff members have a personal duty to work within the provisions of the Act approved Trust-wide policies and their associated procedures and protocols.

Failure to observe and implement policy and their related procedures and protocols is addressed through performance management mechanisms, training, or where appropriate, the Trusts Disciplinary Procedures.

6. Training

All Registered Practitioners have an individual professional responsibility to keep up to date with the Act and Code of Practice.

The Learning and Development department will ensure all relevant staff required to undertake MHA training are identified on the Training Matrix and will also provide regular reports to the Mental Health Legislation work stream group and each Delivery Unit as to the take up of this training. Each Delivery Unit will be responsible for ensuring that any identified gaps in completion of the training are addressed.

7. Monitoring or audit

Compliance with the policy will be monitored through a variety of different mechanisms, as follows.

An annual and quarterly update assurance reports on the Mental Health Act will be provided to the Trust Mental Health Legislation work stream group, and reported to the Trust Quality and Standards Committee. Exception reports will be made through the Head of Social Care as required between scheduled reports to the Trust Mental Health Legislation work stream group.

The Trust Board will make an annual declaration in respect of Mental Health Act compliance as part of its declaration on compliance with Care Quality Commission's Fundamental standards including Regulation 10 and 13 and other relevant statutory standards in relation to the Mental Health Act.

The Trust benchmarks its performance with other health trusts through CQC Annual reports on the Mental Health Act and other available sources. This is included within the annual assurance to the Quality and Standards Committee and board.

Periodically Commissioners and CQC MHA and other inspections audit the Trust's arrangements for the Mental Health Act.

The Trust Head of Social will review patient and staff experience data on a rolling quarterly basis to assess feedback on the success of the implementation in practice of this policy.

The Learning and Development department will maintain records of Mental Health Act training and follow up non-attendees. The training programme is routinely evaluated by participants. This information is internally externally though lead commissioners, and reported annually to the Quality and Standards Committee and Board.

The Trust undertakes regular audits of its arrangements for the Mental Health Act and Deprivation of Liberty Safeguards. It does this on a case basis and through a program of internal audits.

Each ward and team who are providing care and treatment to service users detained under the act including those on extended s17 leave and supervised community treatment must have an effective system in place to monitor adherence to the Act.

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Good management supervision and case load management are key to the safe and effective implementation of the MHA. Line managers will monitor adherence to the Act, ensuring the provision of lawful interventions.

At practice level, it is recognised that dealing with Mental Health Act issues may be emotionally upsetting for staff and volunteers involved. Managers must therefore ensure that when considering Mental Health Act issues are a core part of each individual's supervision arrangements, as well as ensuring best practice in the application of the Mental Health Act in that they ensure support is provided when necessary to the staff or volunteers involved.

8. References

- [Human Rights Act 1998](#) placed a positive duty on public bodies to act in compliance with the 1950 European Convention on Human Rights
- [Equality Act 2010](#)
- [Health and Social Care Act](#)
- [The Mental Health Act](#)
- [MHA Code of Practice 2015](#)
- [MCA and DoLS Policy](#)
- [MCA Code of Practice](#)
- [Multi Agency Protocol - Working together when mental health act assessments are requested, including situations where resources are unavailable](#)
- [De-escalation room standard operational procedure](#)

9. Associated and Related Procedural Documents:

All related Procedures of the Mental Health Act are located on the [Mental Health Act](#) pages of Ourspace.

10. Appendix 1: Hospital Managers Scheme of Delegation

Delegated Power	Delegated To
Receipt and Scrutiny of Documents	
Formal receipt and scrutiny of documents to enable admission	Mental Health Act Administration, Nurse in charge of ward or Senior Nurse
Formal receipt and scrutiny of documents to enable Supervised Community Treatment (SCT)	Mental Health Act Administration or Senior Nurse.
Detailed scrutiny of formal documents to ensure legality and identify correctable errors	Mental Health Legislation Administration Team
Scrutiny of medical grounds for admission/compulsion	Consultant Psychiatrist
Rectification of correctable errors	Mental Health Legislation Administration Team
Request for social circumstances report from Local Social Services Authority, where an admission is based on an application made by the nearest relative	Mental Health Legislation Administration Team
The maintenance of records and provision of reports	Mental Health Legislation Administration Team
Provision of Information	
Hospital Managers are required to ensure that detained patients, SCT patients and, where relevant, their nearest relative, receive important information about: <ul style="list-style-type: none"> • the way that the Act works • their rights – including the right to an Independent Mental Health Advocate (IMHA) • decisions taken regarding their detention/compulsion • changes to their care arrangements 	Responsible Clinicians, Named Nurse, Ward Manager, Care Coordinator, Team Manager, Mental Health Legislation Administration Team
Information to patients delegated	Named Nurse, Ward Manager or Care Coordinator, Team Manager, Mental Health Legislation Administration Team
Information to nearest relative	Mental Health Legislation Administration Team
Transfer of Patients	
transfer patients (including powers to convey) between hospitals, for detained and recalled SCT patients, and from hospital to guardianship	Intensive Team Manager, Ward Manager, Matrons and On Call Managers

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Patients' Correspondence	
Withholding the outgoing mail of a detained patient where the addressee has requested such in writing	Ward Managers
Mental Health Review Tribunals	
A duty is placed on Hospital Managers to refer specified cases of detained and SCT patients to the Tribunal (Section 68 of the MHA) , or in certain circumstances to request the Secretary of State to do so. They are also required to provide the Tribunal with information and reports and to facilitate access to legal representation	Mental Health Legislation Administration Team
Patients wishing to appeal to Tribunals should be assisted to do so	Ward Managers Mental Health Legislation Administration Team
Representation for Responsible Authority at Tribunals	
Hospital Managers, as the Responsible Authority, are entitled to representation at Mental Health Review Tribunals	<i>Manager with lead responsibility for Mental Health Act matters</i>
Domestic Violence, Crime and Victims Act 2004	
Hospital Managers have duties under this legislation in regard to victims of offences committed by certain patients	Mental Health Legislation Administration Team
Authority to Detain	
Hospital Managers can authorise people to keep custody of patients while on section 17 leave of absence and under section 18 authorise people to take and return patients absent without leave	Ward Managers, Team Managers
Internal Mail System/FAX	
Decision regarding the use of Trust internal mail system and FAX as a means of being served documents	Senior managers
Patients Detained for Reports	
Hospital Managers should enable patients remanded on sections 35 and 36 to access suitable legal representation	Mental Health Legislation Administration Team

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Age-Appropriate Services	
Hospital Managers should ensure that environments to which children and young people are admitted are suitable for their age (subject to their needs)* and must consider whether a patient, admitted to an adult ward in an emergency, should be transferred to more appropriate accommodation	Clinical Leads and Service Managers, Matrons, Ward Managers
In order to implement these delegated duties Hospital Managers require officers to produce policies/procedures/guidance as appropriate and to review them in line with Trust policy	Director of Nursing and Quality

Note : When the Ward or Team Manager is not on duty , powers are further delegated to the Nurse in Charge of the ward or the Registered Practitioner in Charge of relevant community teams and other staff on duty.

Version History				
Version	Date	Revision description	Editor	Status
1.0	09 Oct 2008	Approved by Trust Integrated Governance Committee		Approved
1.1	Dec 2008	Minor amendments – Approved by Mental Health Act Committee		Approved
2.0	08 July 2010	Approved by MHLC	AM	Approved
3.0	07 Sept 2010	Approved by Quality & Healthcare Governance Committee	AM	Approved
3.1	10 June 2014	Re-draft due to admin changes	MD	Draft
4.0	17 June 2014	Minor amendments – Approved by Quality and Standards Committee	MD	Approved
4.1	08 February 2016	Re-draft to reference changes required by the revised Mental Health Act Code of Practice [2015]	MD	Draft
5.0	16 February 2016	Minor amendments from committee comments	MD	Approved
5.1	24 January 2017	Redraft due to administrative changes	MD	Draft
6.0	27 January 2017	Approved by the Director of Nursing and Quality	AD	Approved
6.1	11 January 2018	Redraft due to administrative changes	MD	Draft
7.0	09 March 2018	Approved by the Medical Director	RE	Approved
7.1	11 Sept 2018	Link made to approved De-escalation room standard operational procedure	AM Associate Director of Nursing	Approved
7.2	24 July 2019	Extended until December 2019	Medical Director	Approved