

Mental Health Act 1983: Scheme of Delegation

Document Summary

The purpose of this document is to clearly identify to whom the Trust delegates responsibilities under the Mental Health Act in compliance with the MHA 1983 and its associated Code of Practice.

DOCUMENT NUMBER	POL/001/071
DATE RATIFIED	September 2017
DATE IMPLEMENTED	October 2017
NEXT REVIEW DATE	October 2019
ACCOUNTABLE DIRECTOR	Director of Quality & Nursing
POLICY AUTHOR	Head of MHLU & Legal Services

Important Note:

The Intranet version of this document is the only version that is maintained.

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendments.

TABLE OF CONTENTS

1	SCOPE.....	3
2	INTRODUCTION.....	3
3	STATEMENT OF INTENT	4
4	RELATED TRUST POLICIES, PROCESSES AND PROCEDURES	4
5	DEFINITIONS	5
6	DUTIES.....	6
7	GOVERNANCE.....	6
8	MONITORING COMPLIANCE	6
9	REFERENCES/BIBLIOGRAPHY	7
10	EQUALITY IMPACT ASSESSMENT	8
	Appendix 1 – Scheme of Delegation	11
	Appendix 2 – Mental Health Act Governance graphical overview	14
	DOCUMENT CONTROL CHECKLIST	Error! Bookmark not defined.
	The Golden Rules	Error! Bookmark not defined.

1 SCOPE

This Scheme of Delegation applies to the Cumbria Partnership NHS Foundation Trust (the Trust) as a whole. It provides clarity in relation to the delegation of duties and responsibilities relating to patients who are or may become subject to compulsion under the Mental Health Act (1983) whilst receiving care within the Trust. The protocol is resultant from the MHA (83) and the revised Code of Practice and therefore any deviation from the protocol must be agreed by the Mental Health Act Hospital Managers & Associates Board.

2 INTRODUCTION

The Mental Health Act 1983 (MHA (83)) as amended places the governance of the functions of the Hospital Managers with the trust as a whole. It is the Hospital Managers who have the primary responsibility for ensuring that the requirements of the MHA (83) are lawfully followed and that the care and treatment of an individual fully accord with its provisions. The Mental Health Act Code of Practice (the Code) provides guidance to the Hospital Managers on their obligations in respect of their explicit duties. The term Hospital Managers in this instance being used to identify those individuals, in which the trust has, by virtue of delegated authority, vested their duties and responsibilities. Section 145B of the MHA (83) requires the foundation trust's constitution may not permit its functions under the MHA (83) to be delegated to executive directors or committees of directors unless that is permitted by or under the MHA (83) itself. s23 of the MHA (83) allows the delegation of discharge decisions to panels of three or more individuals authorised by the board of the trust, the Associate Mental Health Act Hospital Managers, provided those persons are neither executive directors nor employees of the trust. Further it permits delegation of functions to other persons where that is allowed by or under the MHA (83). The Mental Health Act Hospital Managers & Associates (MHAHMA) are the body within the registered Trust who, having been appointed by the Trust board to discharge its functions under the MHA(83), are the responsible authority in respect of the custody of an individual subject to compulsion under that Act. When performing their functions and discharging their responsibilities under the MHA (83) they are a public body distinct from the Trust. As such their actions and decisions are subject to judicial review and immutable to the state.

The statutory function of the MHAHMA can be categorised into the following groups:

- 1) The receiving of Reports
- 2) The detention of patients
- 3) Receipt and scrutiny of the detention documents
- 4) The renewal of detention
- 5) Discharge from compulsion
- 6) Prevention of discharge

- 7) Referral to the Mental Health Tribunal
- 8) The provision of information
 - a) To patients
 - b) To the Nearest Relative
 - c) To Local Social Services Authority (LSSA)
 - d) To Courts
 - e) Victims of crime
- 9) Transfer and reassignment of patients between Hospital Managers
- 10) Children and young people
- 11) Patients' correspondence

The Hospital Managers may only delegate these functions to officers, clinicians, administrative staff, and others only in line with the organisation's constitution or where directly permitted to do so by the MHA(83), its consequent regulations or where permitted to do so by other legislation. This protocol details which of, and to whom, those responsibilities are delegated.

3 STATEMENT OF INTENT

To clearly identify to whom the Hospital Managers delegate responsibilities under the Act in compliance with the revised Mental Health Act 1983 Code of Practice Chapter 37

4 RELATED TRUST POLICIES, PROCESSES AND PROCEDURES

[POL/001/005/014](#) Age Appropriate Admissions Policy

[POL/001/005/017](#) Children Visiting Detained Patients Guidance

[POL/001/005/013](#) Consent to Treatment, Part IV Mental Health Act 1983

[CCC](#)
[Guardianship](#) Guardianship Policy, Procedures and Guidance (Interim Joint Cumbria County Council Policy)

[POL/001/005/004](#) Guidelines on Section 5 (4) Nurses Six Hour Holding Power

[POL/001/005/005](#) Informal Patients Leave Arrangements Guidelines

POL/001/005/016	Management of Mental Health and Learning Disabilities Patients Policy
POL/001/005/012	Mental Act Guideline on the Exclusion of Visitors to Detained Patients
POL/001/005/009	Mental Health Act Guidelines for the Exercise of Powers to Withhold Outgoing Mail
POL/001/005/007	Mental Health Act Guidelines on Receipt and Scrutiny of Section Papers
POL/001/005/003	Mental Health Act Guidelines on Section 5 (2) 72 Hour Holding Power (2013)
POL/001/005/011	MHA Section 117 Aftercare Policy
POL/001/005/015	Policy and Guidance on Section 132, 132A and 133 Patients Rights
POL/001/005/006	Section 17 Leave of Absence MHA (1983) Guidelines
POL/001/005/010	Use of Supervised Community Treatment MHA Section 17(a)

5 DEFINITIONS

AMHAHM	Associate Mental Health Act Hospital Manager
AMHP	Approved Mental Health Professional
AWOL	Absent Without Leave
CoP	Code of Practice
CrtP	Court of Protection
CTO	Community Treatment Order
LSSA	Local Social Services Authority
MDT	Multi-disciplinary team
MHA (83)	Mental Health Act 1983
MHAA	Mental Health Act Administrator
MHAHM	Mental Health Act Hospital Manager
MHLO	Mental Health Legislation Officer
MHLU	Mental Health Legislation Unit
MHT	Mental Health Tribunal
MoJ	Ministry of Justice
RC	Responsible Clinician
SCT	Supervised Community Treatment

6 DUTIES

The scheme of delegation which outlines duties and responsibilities in relation to the Mental Health Act is appended to this document as Appendix 1.

7 GOVERNANCE

The Code of Practice provides statutory guidance to registered medical practitioners, approved clinicians, managers and staff of providers and approved mental health professionals on how they should proceed when undertaking duties under the MHA (83). However, everyone within the organisation has a role in ensuring that the MHA (83) and the Code are complied with. The Code applies to the care and treatment of all patients in England who are subject to the exercise of powers and the discharge of duties under the MHA (83). The Code requires all those undertaking functions under the MHA (83) understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the Act. Those key principles are;

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

All decisions must be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998 (HRA) and Equality Act 2010. The governance and reporting structures related to the delegation of duties and decision making, associated with this protocol are detailed in Appendix 2.

8 MONITORING COMPLIANCE WITH THIS DOCUMENT

The table below outlines the Trusts' monitoring arrangements for this policy/document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual responsible for the monitoring	Frequency of the monitoring activity	Group / committee which will receive the findings / monitoring report	Group / committee / individual responsible for ensuring that the actions are completed
Review the Trust's operation of	Quarterly meeting of the MHAHMA	Chair of the Board	Quarterly	CPFT Trust Board Quality &	MHAHMA Board

the Act & governance arrangements	Board			Safety Committee	
-----------------------------------	-------	--	--	------------------	--

9 REFERENCES/ BIBLIOGRAPHY

Care Standards Act 2000 c.14
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
Domestic Violence, Crime and Victims Act 2004 c.28
Equality Act 2010 c.15
Human Rights Act 1998 c.42
Mental Health Act 1983 c.20
Department of Health, Code of Practice Mental Health Act 1983 (TSO 2015)
The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 S.I. 1184

10 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010 came into force on the 1st October 2010. Under the Act there is a legal obligation to undertake Equality Impact Assessments (EIAs). The Trust and its employees must have due regard of the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

EIAs assess the impact of the Trust's actions on people from the protected characteristics identified in the Act. In addition they should show how our policies and practices would further or have furthered the above aims. Demonstration of the engagement you have undertaken when doing the assessment will be a key part of this process. Engagement covers a range of different activities, from formal public consultations to direct engagement with people from protected groups. The level of engagement you undertake will depend on the scale of policy/ project/ activity you are developing or updating.

To comply with legislation EIAs must be a comprehensive, formal and structured process and the results must be published. These factors enable the Trust to demonstrate to all stakeholders and regulatory bodies that we have fully addressed Equality and Diversity within the Trust.

An Equality Impact Assessment must be done at the **development stage** of any policy, review, project, service change etc.

1	Name and Job Title of person completing assessment	Mr D A Eldon Head of MHLU & Legal Services
2	Name of service, policy or function being assessed	Mental Health Act 1983: Scheme of Delegation
3	What are the main objectives or aims of the service/policy/function?	To clarify the delegated duties and responsibilities relating to patients who are or may become subject to compulsion under the Mental Health Act (1983) whilst receiving care within the Trust
4	Date	September 2015

Stage 1: Initial Screening

5	What evidence is available to suggest that the proposed service/policy/function could have an impact on people from the protected characteristics? Document reasons, e.g. research, results of consultation, monitoring data and assess relevance as: <i>Not relevant or Relevant Low / Medium / High.</i>		
	Protected Characteristic	Relevance	Evidence
a	Race	Not relevant	Legislative requirement
b	Religion / Spirituality	Not relevant	
c	Gender	Not relevant	
d	Disability	Not relevant	
e	Sexual Orientation	Not relevant	
f	Age	Not relevant	
g	Pregnancy/maternity	Not relevant	
h	Gender Reassignment	Not relevant	
i	Marriage and Civil Partnership	Not relevant	
<p>If you assess the service/policy/function as not relevant, please proceed to section 11.</p> <p>If you assess the service/policy/function as relevant, continue to Stage 2, Full Equality Impact Assessment.</p>			

Stage 2: Full Equality Impact Assessment		
6	Are there service user, public or staff concerns that the proposed service/policy/function may be discriminatory, or have an adverse impact on people from the protected characteristics?	
a	Public	N/A
b	Staff	
<p>If there are no concerns, proceed to section 11.</p> <p>If there are concerns, amend service/policy/function to mitigate adverse impact, consider actions to eliminate adverse impact, or justify adverse impact.</p>		
7	Can the adverse impact be justified?	
8	What changes were made to the service/policy/function as result of information gathering?	

9	What arrangements will you put in place to monitor impact of the proposed service/policy/function on individuals from the protected characteristics?						
10	List below actions you will take to address any unjustified impact and promote equality of outcome for individuals from protected characteristics. Consider actions for any procedures, services, training and projects related to the service/policy/function which have the potential to promote equality.						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%; text-align: center;">Action</th> <th style="width: 33%; text-align: center;">Lead</th> <th style="width: 33%; text-align: center;">Timescales</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Action	Lead	Timescales			
Action	Lead	Timescales					
11	Review date						
<p>I am satisfied that this service/policy/function has been successfully equality impact assessed.</p> <p>Date: September 2015</p> <p>Author: <i>DA Eldon</i></p>							
<p>Please send the completed assessment for scrutiny to: Project Co-ordinator, Cumbria Partnership NHS Foundation Trust, Trust Head Quarters.</p>							

APPENDIX 1 – SCHEME OF DELIGATION

Non Delegated Functions			
Function	Legislation	Code of Practice	Delegation
Review of patients' detention	Section 20(3)	Chapter 31 Chapter 38	Non-executive Directors and Mental Health Act Associate Managers
Exercise of hospital managers' power to discharge unrestricted detained and Supervised Community Treatment (SCT) patients	Section 23(2)(a)	Chapter 38	Non-executive Directors and Mental Health Act Associate Managers
Review the Trust's operation of the Act & governance arrangements		Chapter 37	Non-executive Directors and Mental Health Act Associate Managers
Delegated Functions			
Formal Receipt of Renewal documentation on behalf of Hospital Managers	Section 20(3)(b)	Chapter 32	Head of MHLU MHL Officer or deputy
Receipt, scrutiny and rectification of statutory admission documents for detained patients	MHA Section 11(2) MHA Section 15 Regulation 4(3)	Chapter 35	Receipt of documents: Nurse in Charge MHL Officer or deputy Head of MHLU Scrutiny and rectification of documents: MHL Officer or deputy Head of MHLU Medical Scrutiny: Consultant Psychiatrists
Audit of statutory admission documents for detained patients	Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (No. 1184).	Chapter 35	MHL Officer or deputy Head of MHLU
Rectification of applications and	Section 15 and Regulation	Chapter 35	MHL Officer or deputy

medical recommendations	4		Head of MHLU
Recording admission	Regulations 4 and 6 MHA sections 5(2) & 5(4) Regulation 4(1)(g) Regulation 4(1)(h)	Chapter 35	Nurse in Charge MHL Officer or deputy
Allocation of a RC	Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 (No. 1184).	Chapter 36	Nurse in Charge MHL Officer or deputy
Receipt of order for the discharge of a patient, or notice of intention to make such an order, from detention or CTO by RC or nearest relative	MHA Sections 23 and 25	Chapter 35	Nurse in Charge MHL Officer or deputy Head of MHLU
Receipt of Community Treatment Order	MHA Section 17A Regulation 6(1)(c)	Chapter 35	MHL Officer or deputy
Receipt of order varying CTO conditions	MHA Section 17B(4) Regulation 6(2)(b)	Chapter 35	MHL Officer or deputy Head of MHLU
Receipt of extension report of CTO	MHA Section 20A(4)(b) Regulation 13(6)(a) and (b),	Chapter 35	MHL Officer or deputy
Receipt of notice recalling patient from CTO	MHA Section 17E(6) Regulation 6(3)(a)	Chapter 35	Head of MHLU
Record of detention in hospital after recall from CTO	MHA Section 17E Regulation 6(3)(d)	Chapter 35	Nurse in Charge MHL Officer or deputy Head of MHLU
Receipt of CTO revocation order	MHA Section 17F(2) Regulation 9(3)(a) and (5)	Chapter 35	Nurse in Charge MHL Officer or deputy
Assignment of transfer of responsibility to another hospital for CTO patient	MHA Section 19A Regulations 17(3)(a) and (d)(i) and (d)(ii)	Chapter 35 Chapter 37	MHL Officer or deputy Head of MHLU
Transfer of detained patients Note: (For restricted patients, consent of	MHA Section 19 Regulation 7(2)(a) and	Chapter 37	The decision to transfer remains with the RC Scrutiny of the documentation with MHLU officers

MoJ required).	7(3)		
Duties to give information to detained and SCT patients, and nearest relatives	Sections 130D, 132, 132A and 133 and Regulation 26	Chapter 4 Chapter 37	Nurse in Charge MHLU Officers & deputies
Submission of Statements and reports to MHT	Tribunal Rules and Practice Directions 2008	Chapter 12	MHL Officer or deputy
Referral of cases to MHT Or request Sec of State for Health to refer	MHA Section 68	Chapter 37	MHL Officer or deputy Head of MHLU
Assisting detained and SCT patients with MHT applications	Tribunal Rules and Practice Directions 2008	Chapter 12	Nurse in Charge MHLU Officers & deputies
Conveyance of detained and SCT patients under the Act and retaking of patients absent without leave	MHA Section 18	Chapter 17 Chapter 28	Any officer on the staff of the trust, any police officer (or other constable), any person authorised in writing by the MHLU Officers on behalf of the MHAHM, an AMHP.
Information for Victims	Domestic Violence, Crime and Victims Act 2004	Chapter 37 Chapter 40	RC and MHLU Officers or their deputies
Patients Correspondence; Inspection and withholding of mail	MHA Section 134	Chapter 4 Chapter 37	RC and MHLU Officers or their deputies
Hospital accommodation for children and young people	MHA Section 131A	Chapter 19 Chapter 37	All Care Groups Senior Manager
Organisational, or Inter-agency escalation regarding deviation from Standard Operating Procedures and Scheme of Delegation	Code of Practice	Chapter 37	MHL Officer or deputy Head of MHLU

APPENDIX 2 – MENTAL HEALTH ACT GOVERNANCE GRAPHICAL OVERVIEW



