

POLICY AND GUIDANCE ON SECTION 132, 132(A) & 133 PATIENTS RIGHTS



Document Summary

Guidance to ensure compliance with MHA Code of Practice in respect detained patients' rights under the Mental Health Act (1983) as amended

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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.

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1. SCOPE

The provision of information to qualifying patients within Cumbria Partnership NHS Foundation Trust in compliance with section 132 of Mental Health Act (1983). These procedural guidelines have been formed by the Mental Health Act 1983 Code of Practice 2015 and Reference Guide to the Mental Health Act 2015

2. INTRODUCTION

Sections 132, 132(a) and 133 of the Mental Health Act 1983 (MHA 1983) applies to all detained patients. It places a duty on the "Hospital Managers" to provide certain information (both orally and in writing) to patients, regarding which section of the MHA 1983 for the time-being authorises his/her detention and the effects of that section. Under the Act the Hospital Managers have the authority to delegate this duty to staff within the Trust. This information includes

- Details of the relevant Section under which they are detained
- The powers of that Section
- The patients' rights of appeal
- The right to free legal advice
- The right to an Independent Mental Health Act Advocate (IMHA)

There is also a duty to ensure that patients understand the following provisions of the Act and how they apply to them;

1. The ways they can be discharged from detention
2. The role of the Nearest Relative
3. The rules in respect to Consent to Treatment under the Act
4. How to appeal to the Managers and the Mental Health Tribunal
5. The role of the Care Quality Commission
6. How to access a Code of Practice

There is a statutory duty to ensure that such rights are given as soon as practicable after the detention. The staff giving the information should be as helpful as possible and if it appears that the patient does not understand the information they should try and explain it further at a later date if necessary and using appropriate communications aids if required.

3. STATEMENT OF INTENT

To ensure compliance with the Mental Health Act (1983) and its associated Code of Practice

4. DEFINITIONS

AC	Approved Clinician
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
RMN	Registered Mental Nurse
RMNH	Registered Mental Handicap Nurse
SCT	Supervised Community Treatment

5. DUTIES

a. Mental Health Act Hospital Managers

The Mental Health Act (1983) requires the Trust's Mental Health Act Hospital Managers have in place policy, procedures and guidelines in respect of the rights of detained patients.

b. Executive Director of Operations and Executive Nurse

The Executive Director of Operations and Executive Nurse is the accountable Director for this policy.

c. The Unit/Ward Manager

The Unit/Ward/Team Manager has management responsibility for ensuring this policy is implemented.

d. The Unit/Ward/Team Staff

In order to fulfil their statutory duties Hospital Managers require that staff should ensure:

- the correct information is given to the patient/nearest relative (with patient consent);
- the information is given in a suitable manner and at a suitable time and in accordance with the law;
- The member of staff who is to give the information has received sufficient guidance and is aware of the key issues regarding the information to be given.
- A record is kept of the information given, including how, when and by whom it was given.
- A regular check is made that the information has been properly given to each detained patient, and understood by him or her.

6. DETAILS OF THE POLICY

6.1. STAFF RESPONSIBILITIES

The senior member of nursing staff on duty on the unit at the time the patient is placed on section or received on to the unit, is responsible for ensuring the information is given. The information must be given to patients as soon as practicable after the commencement of the patient's detention and as soon as practicable after a different section of the Act is used to authorise detention. Additionally patients should be reminded of their rights when their detention is renewed or extended. In practice this will mean that the patient will have to be informed of their rights immediately if he or she is detained for **72 hours or less** including those patients subject to recall to hospital under Supervised Community Treatment. Care Coordinators are responsible for ensuring that those individuals subject to CTO receive their rights on first application of the order, prior to any extension and appeal

6.2. INFORMATION TO BE GIVEN TO PATIENTS

The information must be given both orally and in writing. The patient must be given a copy of the statutory information leaflet relevant to the particular Section provided by the Department of Health. In addition the following areas must also be covered

Information on Consent to Treatment

The patient must be informed;

1. The nature purpose and likely effects of any treatment which is planned;
2. Of their rights to withdraw their consent to treatment at any time and of the need for consent to be given for any further treatment;
3. And how and when treatment can be given without their consent, including by the second opinion process and when treatment has begun if stopping it would cause serious suffering to the patient.

Information on detention, renewal and discharge

The patient should be informed:

1. Of the Section of the Act under which they are detained, and the reason for their detention;
2. That they will not automatically be discharged when the current period of detention ends;
3. That their detention will not automatically be renewed when the current period of detention ends;
4. Of their right to have their views about their continued detention or discharge considered before any decision is made.

Information on applications to Mental Health Tribunals

Patients must be informed:

1. Of their rights to apply to Mental Health Tribunals;
2. About the role of the Tribunal;
3. How to apply to the Tribunal;
4. How to contact a suitably qualified solicitor, and assisted to do so if required;
5. That free Legal Aid - Advice By Way of Representation (ABWOR)
6. How to contact any other organisation which may be able to help them make an application to a Tribunal, e.g., PET, Independent Mental Health Act Advocacy Services, Mental Health Act administration.

Information on applications to the Hospital Managers

Patients must be informed:

1. Of their rights to apply to the Hospital Managers;
2. About the role of the Hospital Managers;
3. The Hospital Managers Visiting Programme
4. How to contact any other organisation which may be able to help them make an application to a Tribunal, e.g., PET, Independent Mental Health Act Advocacy Services, Mental Health Act administration

Information on the Care Quality Commission Mental Health Act Reviewers

Patients must be informed:

1. About the role of the Mental Health Act Reviewer;
2. When the Commission is to visit a hospital or unit;
3. Of their right to meet the Commissioners/Reviewer;
4. Of their right to complain to the Commission.

7. NEAREST RELATIVE

The staff must take all reasonable practicable steps (unless the patient requests otherwise to ensure compliance with Article 8 of the ECHR) to give the Nearest Relative the same information as that given to the patient. This should be done either when the patient is given the information or with a reasonable time afterwards. Unless the Nearest Relative has exercised their powers of discharge under the Act then they must be informed of a patients impending discharge. This should be given at least seven days prior to the discharge; therefore MHA Administration will require notification of impending discharge prior to that date. Mental Health Administration will be responsible for writing to the Nearest Relative on Admission/Discharge

This is only applicable if the patient consents to this information being given to the Nearest Relative.

8. VICTIMS RIGHTS

In the case of patients detained under Part 3 of the Act, information regarding the patients discharge or transfer may be shared with people with a valid interest. This may include victims and the families of victims as described in the Domestic Violence, Crime and Victims Act 2004 (as amended by the MHA 2007). In other circumstances, professionals should encourage (but cannot require) mentally disordered offender patients to agree to share information that will enable victims and victims' families to be informed about their progress. Among other benefits, disclosure of such information can sometimes serve to reduce the danger of harmful confrontations after a discharge of which victims were unaware. Professionals should be ready to discuss with patients the benefits of enabling some information to be given by professionals to victims, within the spirit of the Code of Practice for Victims of Crime issued under the DVCA Act.

9. PROCESS

At the commencement of a patient's detention under the MHA the patient must be given his/her rights orally and in writing, unless it is not practicable at that time due to the patient being unable to understand what they are being told in which cases this should be recorded on the 132 form and within the patients clinical record.

The information under section 132 must be given to the patient by a suitable professional to ensure that information regarding treatment issues can be answered; this must be documented in the patient's clinical record.

When giving the patient information orally it should be explained as clearly as possible and the patient must be given the opportunity to ask questions to clarify the information they are being given, this may also be helpful in deciding if the patient has understood their rights.

In the event that the patient is unable to receive or understand their rights on the application of a section of the Mental Health Act, the professional responsible for giving the patient his/her rights, to address this need must formulate a care plan. A judgement (as per the Mental Capacity Act) as to the patient's capacity to understand the information must be made by the person with the responsibility for providing the

information. Should the person lack capacity then the care plan must have regards to the patients' rights and be compliant with the Best Interest process detailed in the MCA Code of Practice. All such decisions should be recorded in the patient's clinical record and kept under constant review by the care team.

The nurse must complete the recording form provided by the Mental Health Act Administration Office. The recording forms, which are provided for different sections of the act, have a written procedure for the time scale of how often the rights must be given to the patient. A copy of the form must be kept in the patient's records with the copies of Section Papers. All entries regarding this procedure must be recorded on the patients electronic record.

The Mental Health Act Administration staff will audit the recording forms and information will be provided to the Hospital Managers during their visiting programme.

If the patient wishes to appeal to the Hospital Managers or Mental Health Tribunal or both, the Mental Health Act Administration office to assist in this process provides standardised letters and forms. The appeal letters must be sent to the Mental Health Act Administration office immediately.

Where a patient has the need for an interpreter then a care plan should be raised and appropriate interpretation support sought through the period of care. The Trust has contracted for the provision of independent interpreters and this can be accessed via the Patient Experience Team (PET). Independent interpreters should always be sought but in the case of emergencies you should consult with your Manager or the Manager on Call regarding the appropriateness of using alternative provisions. If this issue occurs it should be fully documented in the patient records.

The following recording forms are provided for the purpose of Section 132 MHA 1983:

1. Section 5/4, 5/2, 4, and 136
2. Section 2
3. Section 3
4. Section 35
5. Section 36
6. Section 37
7. Section 38
8. Section 37/41
9. Section 47/49
10. Section 48/49
11. Supervised Community Treatment (CTO)

An example of a Section 2 leaflet is given in the Appendix . Further copies can be obtained from MHA Administration Offices or the Trust Intranet

10. TRAINING

Training required to fulfil this policy will be provided in accordance with the Trust's Training Needs Analysis. Management of training will be in accordance with the Trust's Learning and Development Policy

11. 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
Appropriate Rights information is given within 24 hours of detention	Audit	Unit/Ward Manager	Quarterly	MH Network Governance	MHAHM
Lack of capacity and relevant care plan are recorded in clinical notes and are MCA compliant	Audit	Unit/Ward Manager	Quarterly	MH Network Governance	MHAHM
Rights are explained to patients regularly and at a minimum for 1 month intervals	Audit	Unit/Ward Manager	Quarterly	MH Network Governance	MHAHM

12. REFERENCES/ BIBLIOGRAPHY

Human Rights Act 1998 c.42
Mental Health Act 1983 c.20
Department of Health, Code of Practice Mental Health Act 1983 (TSO 2015)
Reference Guide to the Mental Health Act 1983 (TSO 2015)
The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 S.I. 1184

13. RELATED TRUST POLICY/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/001/005/006	Section 17 Leave of Absence MHA (1983) Guidelines
POL/001/005/010	Use of Supervised Community Treatment MHA Section 17(a)

STATEMENT OF INFORMATION / STATUTORY RIGHTS (SECTION 132) GIVEN TO DETAINED PATIENTS:

Label

Patient's Name:

Ward: Section:

Start date: Expiry date:

Responsible Clinician:

Nearest Relative's Name: Relationship: (under the Act)

Address:

Has any objection been made by Patient to Nearest Relative being informed: **YES / NO**

Reason for detention explained to Patient **YES / NO**

Is Patient in receipt of MHA leaflet **YES / NO**

Has leaflet been explained to Patient **YES / NO**
(i.e. Consent to Treatment / Appeals to MHRT / Managers etc.)

Explain access to IMHA (Independent Mental Health Act Advocate) **YES / NO**

Patient requests referral to IMHA **YES / NO**

Did Patient understand his / her Rights **YES / NO**

Unable to comprehend information – **REPEAT VISIT TO EXPLAIN RIGHTS**
YES / NO

Repeat Visit (date) (Written into Care Plan / Ward Diary)
YES / NO

Signed: Signed:
.....
(Senior Nurse)

(Patient)

Date: Time:
.....

To be completed on admission / re-grade of Section. Copy to be filed in patient's notes and original form to be attached to Section papers FAO: MHA Administrator

ADMISSION TO HOSPITAL FOR ASSESSMENT

(Section 2 of the Mental Health Act 1983)

1. Patient's name	
2. Name of the person in charge of your care (your "responsible clinician")	
3. Name of hospital and ward	

Why am I in hospital?

You are being kept in this hospital under section 2 of the Mental Health Act 1983. You have been examined by two doctors and they think that you have a mental disorder and you must stay in hospital so that the person in charge of your care (your responsible clinician) can find out what is wrong and how to help you.

How long will I be here?

You can be kept here for up to 28 days.

During this time you must not leave unless your responsible clinician tells you that you may. If you try to leave the staff can stop you, and if you do leave you can be brought back.

If you were already being kept in hospital under section 4 of the Mental Health Act, then the time you have already been in hospital counts as part of the 28 days.

In your case the 28 days end on:

Date:	
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