

POLICY FOR THE EXERCISE OF POWERS TO WITHHOLD OUTGOING MAIL

Document Summary

Guidance to ensure compliance with MHA Code of Practice (2015) in respect of the application, the use and implementation of Section 134 of the Mental Health Act 1983

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TABLE OF CONTENTS

1	SCOPE	3
2	Introduction	3
3	Statement of Intent.....	3
4	Definitions	3
5	Duties	3
	5.1 MENTAL HEALTH ACT HOSPITAL MANAGERS	3
	5.2 EXECUTIVE DIRECTOR OF OPERATIONS AND EXECUTIVE NURSE	4
	5.3 THE RESPONSIBLE CLINICIAN AND UNIT/WARD MANAGER	4
6	Details of the Policy.....	4
	6.1 WHAT MAIL CAN BE WITHHELD	4
	6.2 PROCEDURE FOR WITHHOLDING OUTGOING MAIL	5
	6.3 PROCEDURE FOR INSPECTING CORRESPONDENCE	5
	6.4 PATIENT’S RIGHTS.....	6
7	Training	6
8	Monitoring compliance with this Document.....	6
9	References/ Bibliography	7
10	Related Trust Policy/Procedures.....	7
	APPENDIX 1: FORM 1(a)	8
	APPENDIX 2: FORM 1(b)	9
	APPENDIX 3: FORM 1(c)	10

1 SCOPE

This policy details the roles and responsibilities of all staff when operating Section 134 of Mental Health Act 1983 (the Act) Hospital Managers powers to withhold outgoing mail from a detained patient in compliance with the Mental Health Act Code of Practice.¹

2 INTRODUCTION

Section 134 of the Act allows the Hospital managers to withhold outgoing mail from detained patients if the addressee has requested this in writing to the Hospital Managers, the patients Responsible Clinician or the Secretary of State. The fact that mail has been withheld must be recorded in writing and the patient must be informed. The Care Quality Commission (CQC) is responsible for ensuring monitoring of any decisions to withhold an individual's mail.

3 STATEMENT OF INTENT

To ensure compliance with the Mental Health Act (1983) and it's associated Code of Practice which states paragraph 8.7,

'Blanket restrictions include restrictions concerning: access to the outside world, access to the internet, access to (or banning) mobile phones and chargers, incoming or outgoing mail, visiting hours, access to money or the ability to make personal purchases, or taking part in preferred activities. Such practices have no basis in national guidance or best practice; they promote neither independence nor recovery, and may breach a patient's human rights.'

4 DEFINITIONS

A 'postal packet' has the same meaning in Section 134 as it does in the Post Office Act 1953 which is 'a letter, postcard, reply postcard, newspaper, printed packet or parcel and every packet or article transmissible by post (which includes a telegram).

5 DUTIES

5.1 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 withholding patients mail under the Act.

¹ The Mental Health Act 1983: Code of Practice, TSO 2015, Chp. 37

5.2 Executive Director of Operations and Executive Nurse

The Executive Director of Nursing and Quality is the accountable Director for this policy.

5.3 The Responsible Clinician and Unit/Ward Manager

The Responsible Clinician and Unit/Ward Manager have management responsibility for ensuring this policy is implemented.

6 DETAILS OF THE POLICY

6.1 What Mail Can Be Withheld

Detained patients' outgoing post may be withheld from them, or from the postal operator (as the case may be), only in cases where the addressee has requested that post from that particular patient is withheld. No incoming post may be withheld.

It will not usually be necessary to open post as the requirements of Section 134 subsection (1)(a) can be met by looking at the addresses on patient's outgoing mail. However, it would be permissible for such mail to be opened if staff had a reasonable suspicion that a postal packet contained letters that the patient wanted the addressee to forward to people who had requested that mail be withheld.

There is no power to withhold mail to or from informal patients, patients subject to Guardianship or those subject to recall under a Community Treatment Order. As Section 134 uses the words "detained in a hospital" not "liable to be detained", it appears that Section 134 powers cannot be used if a patient is on leave.

Under no circumstances may the staff withhold post to or from:

- Any Government Minister, any of the Welsh or Scottish Ministers, or the General Counsel to the Welsh Assembly Government;
- A Member of either House of Parliament or a member of the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly;
- Any judge or officer of the Court of Protection, any Court of Protection Visitor, or any person asked by that court for a report under section 49 of the Mental Capacity Act 2005 concerning the patient;
- The Parliamentary Commissioner for Administration (the Parliamentary Ombudsman);
- The Scottish Public Services Ombudsman;
- The Public Services Ombudsman for Wales;
- The Health Service Commissioner for England (the Health Service Ombudsman);
- A member (other than an advisory member) of the Commission for Local Administration in England (the Local Government Ombudsman);

- The First-tier Tribunal, the Upper Tribunal, or the Mental Health Review Tribunal for Wales;
- A strategic health authority, local health board, special health authority, primary care trust, or local social services authority;
- A Community Health Council (in Wales);
- A provider of probation services;
- A provider of a patient advocacy and liaison service for the assistance of patients at the hospital in which the patient is detained and their families and carers;
- A provider of independent mental health advocacy services under the Act, or independent complaints advocacy services under the NHS Act 2006 or the NHS (Wales) Act 2006, or independent mental capacity advocacy under the Mental Capacity Act 2005 for the patient;
- The managers of the hospital in which the patient is detained;
- The patient's legal adviser (if legally qualified and instructed by the patient to act on their behalf); or
- The European Commission of Human Rights or the European Court of Human Rights.

6.2 Procedure for Withholding Outgoing Mail

Person(s) requests that they wish not to receive any postal packages from a patient detained under the Mental Health Act 1983, which must be in writing to the Hospital Managers, the patients Responsible Clinician or the Secretary of State.

Form 1(a) Section 134 (appended) will be completed fully and forwarded to the relevant local Mental Health Act Administrator (copies will be retained for inclusion into patient's case notes).

6.3 Procedure for Inspecting Correspondence

Inspection alone does not have to be recorded: this includes cases where the contents can be read without opening (i.e. in the case of a postcard). If a packet is opened but nothing is withheld, the person who opened the packet must place a notice in the packet stating:

- That the packet has been opened and inspected;
- That nothing has been withheld;
- His/her name and the name of the hospital.

Where a postal packet or item contained in it is withheld, a record must be made in a register kept for the purpose by the person who withheld it of:

- The fact the package or item in it has been withheld;
- The date and the grounds on which it was withheld;
- The name of the appointed person who withheld it;
- A description of the item withheld.
- An explanation of the right to ask CQC to review the decision must be given.

If anything in a packet is withheld, but the package is allowed to go on to the addressee, a notice should be placed in the packet stating:

- That the packet has been opened and inspected and an item withheld;
- The grounds on which the item has been withheld;
- The name of the appointed person who withheld it;
- A description of the item withheld.
- An explanation of the right to ask MHAC to review the decision must be given.

Form 1(b) will be completed and inserted into the opened postal packet then resealed and sent to the addressee and a copy given to the patient if appropriate within **Seven days**. The original form will be sent to the Mental Health Act Administrator with form 1(c) (appended) attached.

6.4 Patient's Rights

Section 121(7) gives the CQC power to review any decision to withhold a postal packet under section 134(1)(b) or (2) provided an application to review such a decision is made within six months of the receipt of the written notice. The applicant should provide the Commission with a copy of the written notice. When reviewing a decision to withhold postal packet the Commission may inspect documents and evidence (including the withheld item), which it reasonably requires. The Commission has the power to release the withheld item to the addressee (section 121(8)).

In practice, because of CQC power to review decisions to withhold post, anything addressed to a patient which is withheld should be retained for at least six months, unless it is necessary to give it to the police or other similar body. After that – assuming that the CQC is not in the process of reviewing the decision – it may be returned to the sender, if that can be done safely.

7 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

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	Group / committee / individual responsible for ensuring that the

				report	actions are completed
Number of recorded incidents of mail being withheld reports	Exception Reporting	Head of Mental Health Legislation Unit	Quarterly	MHAHM	Director of Operations and Executive Nurse

9 REFERENCES/ BIBLIOGRAPHY

Mental Health Act 1983 c20

Code of practice: Mental Health Act 1983, Department of Health 2015

Mental Health Act 1983: reference guide, Department of Health 2015

Mental Capacity Act 2005 c9

Mental Capacity Act Code of Practice, Department of Health 2016

Mental Health Act 2007 c12

Convention for the Protection of Human Rights and Fundamental Freedoms
 (European Convention on Human Rights, as amended)

10 RELATED TRUST POLICY/PROCEDURES

None

APPENDIX 1: FORM 1(a)

SECTION 134, WITHHOLDING DETAINED PATIENTS OUTGOING MAIL

Patient Name: _____ Unit No: _____

Section of the Mental Health Act Detained: _____

RC: _____

Name of addressee to whom postal packets are to be withheld from the Post Office from a detained patient.

1) Name: _____

Address: _____

2) Name: _____

Address: _____

3) Name: _____

Address: _____

For each addressee the original letter from the addressee must be sent to the Mental Health Act Administrator with this form.

APPENDIX 2: FORM 1(b)

SECTION 134, DETAINED PATIENTS INSPECTED OUTGOING MAIL.

This postal packet has been opened and inspected:

BY: _____ **Signed:** _____

DATE: ____ / ____ / ____

HOSPITAL ADDRESS: _____

Has part of the postal packet been withheld:
YES (if yes proceed to part **B**)
NO

B) Part of this postal packet has been withheld due to:
REASON:

DESCRIPTION OF ITEM WITHHELD:

If you require further information about this notice please contact the person completing this notice or the Hospital Managers or the Mental Health Act Administrator.

APPENDIX 3: FORM 1(c)

Scrutiny for Section 134, DETAINED PATIENTS INSPECTED OUTGOING MAIL.

NAME OF DETAINED PATIENT: _____

UNIT No: _____

The original Form 1(b) and the withheld item from the postal packet to be sent to the Mental Health Administrator (**MHAA**)

Check list

Form 1(b) **Signed sender:** _____

Received MHAA: _____

Withheld item **Signed sender:** _____

Received MHAA: _____

Copy of form 1(b) and (c) sent to patient:

Signed MHAA: _____

Date: ____ / ____ / ____

For Clinical Records use

Place patient's unit number on item

Withheld item is stored at:

SIGNED: _____