

Policy for the Searching of Service Users Person, Rooms and Personal Belongings

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Policy for searching the person, rooms and personal belongings of service users in order to protect the staff and patients on mental health/learning disability wards.

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Important Note:

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

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1 SCOPE

Cumbria Partnership NHS Foundation Trust within the premises from which they are responsible within the County of Cumbria, aim to provide a safe environment - free from the effects, harm and influence of substance abuse and other articles that may cause harm, at times this may necessitate the searching of Service Users and their individual belongings and bed areas on the ward/unit.

2 INTRODUCTION

The Purpose of this policy is to provide guidance for staff who are concerned that service users are a risk either to themselves or others and the staff team consider that a search either of the persons property, bed space or room to recover any articles that may be harmful is justified. In cases of very high risk, this may also necessitate a search of the service user's person to recover dangerous articles. All searches should be based on the service users identified risk and this should be recorded and managed in line with the trust policy on risk assessment and management POL/001/017 integrated clinical risk policy.

3 STATEMENT OF INTENT

The aim of this policy and procedure is to:

- Promote a therapeutic, safe environment.
- Be proportionate to each individual's circumstances and necessary for the individual's care and safety and the safety of others.
- Prevent possession, abuse or supply of illegal drugs, or other harmful substances in facilities managed by the Trust.
- Prevent possession of illegal or dangerous weapons, articles or substances in facilities managed by the Trust.
- Provide staff with appropriate procedures and advice on how to deal with incidents involving possession, abuse or supply of illegal drugs or other harmful substances.
- Provide staff with appropriate procedures and advice on how to deal with incidents involving possession of illegal or dangerous weapons, articles or substances.
- To protect the Trust and its employees from potential litigation under the Misuse of Drugs Act.
- Staff should take care not to expose themselves to risk, whilst putting this procedure into practice.

4 DEFINITIONS

The abuse or possession of illegal drugs, other harmful substances, illegal or dangerous weapons or articles for the purpose of this policy and procedure are considered to be possession or/and abuse of:

- Alcohol
- Illegal drugs
- Other harmful substances
- Abused "over the counter" or prescribed drugs
- Weapons or substances that could cause physical damage or risk of harm to people or property e.g. explosives, fire arms etc.

5 DUTIES

Ward Manager

It is the Ward Manager's duty to ensure that staff are aware of this policy and its implementation along with other protocols which may be used in conjunction with this policy such as the Mentally Disordered Offenders Protocols and the Mental Health Act.

Ward Staff

Any staff member implementing any section or part of this policy is responsible for ensuring that the reasons and risk assessment are clearly documented and that all relevant reporting forms are completed.

All Staff

All staff need to be aware of the need to preserve the privacy and dignity of the Service User at all times.

6 SEARCH OF SERVICE USERS PERSON, ROOMS AND PERSONAL BELONGINGS

6.1 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.

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 Trusts 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.

The decision to search in patient settings, patients and/or their belongings is an unusual occurrence and can only take place if there is a clearly identified risk to staff and or patients safety. The loss of regard for the patient's privacy & dignity must be outweighed by the risks involved if no action is taken

There is no lawful authority to randomly or routinely search Service Users without their consent. The Mental Health Act does not provide specific authorization for searching Service Users and their belongings, however guidance is given in the Code of Practice MHA 2015 (para.8.33-8.43)

The policy set out below has been prepared after consultation with legal advisors.

There may be occasions when a member of staff suspects that a Service User is in possession of illegal substances or articles that may be of a dangerous nature and which the Service User may use to injure themselves or others.

The searching of an individual Service User or Service Users property is a potentially provocative procedure that may be construed as an invasion of privacy and/or

degrading by that individual. Principles relating to a Service Users dignity and the need for maximum privacy apply. Staff must take into account a Service Users right of respect for his private life under Article 8 of the European Convention on Human Rights.

Any search should be carried out with the minimum force necessary and should be no more than what is commensurate with the level of resistance or violence on the part of the Service User being searched. Staff should not put themselves at risk of harm or contamination from the person being searched or any object or substance being held by the Service User.

This policy has been written with reference to the Mental Health Act 1983; the Mental Health Act Code of Practice 1999; the Human Rights Act 1998 and the Nursing & Midwifery Council Code of Professional Conduct - June 2002.

The policy applies to Service Users detained pursuant to the Mental Health Act 1983 and informal Service Users.

It will be the responsibility of the Police Officers conveying persons detained under S.136 of the Mental Health Act 1983 to search those persons prior to arrival at a Trust ward. Paragraph 3.11 of the "Joint Operational Protocol re Section 136 of the Mental Health Act 1983" refers - See Appendix 6

6.2 Reasons to Search

Reasons to search a Service User or Service Users property might be indicated where following a risk assessment there is a reasonable suspicion that the person may be concealing something that may be harmful to themselves or others. These indicators may include:

- Reasonable grounds to suspect that a patient is in possession of an item that is prohibited on the ward – e.g. illicit substances or weapons
- Missing items that if found by a patient could be used to cause harm to either themselves or others – e.g. cutlery items

The search should be implemented;

- To prevent injury / harm to the Service User;
- To prevent injury / harm to others;
- To maintain security and safety.

A full risk assessment should be carried out prior to any search and detailed in the Service Users notes.

6.3 Search Procedures

Consent and Authorisation

If it is deemed necessary to search the Service User or his/her property, there should always be two members of staff present, one being a senior member of staff on duty on the Ward or Department. A full explanation of the reason for the search and the procedure should be given to the Service User and the Service User should be asked to consent to a search being made of their body and personal belongings explaining the reason for the proposed action. If the Service User does not understand English, then an interpreter should be arranged.

The Service User has a right to refuse to be searched and in this event every attempt should be made to obtain the Service Users agreement to the procedure.

Where the Service User has not consented to the procedure, the search procedure should only go ahead where it is reasonably suspected that there is a real risk of harm or injury to either the Service User or other person.

If consent is refused by detained Service Users the following shall apply:

If it is felt that suspicions are well founded and there is a risk to the Service User or to others, but the Service User does not consent to the search, staff should consult with the Responsible clinician before undertaking any search so that any clinical objection to

a search by force may be raised. If no such objection is raised, the search should proceed

If a clinical objection is raised by the Responsible Clinician(RC), but the person empowered to search wishes nonetheless to proceed, the matter should be referred to the Clinical Director for decision.

Out of normal working hours if the RC cannot be contacted then the Psychiatrist on Call should be contacted and permission should be sought to proceed with the search – taking into account the reasons why the search is thought to be necessary and the reasons why the Service User is refusing the search.

If there is a delay in obtaining permission as above and there is a serious and imminent risk of harm or injury to the Service User or other persons, if the search is not undertaken urgently, then authorisation may be obtained from the Nurse Manager on duty.

If consent is refused by a Service User who is not detained under the Mental Health Act, then the staff should conduct a mental health assessment with a view to identifying whether the Service User should be detained on the grounds of risk of harm to self or others (the use of the Nurses holding power would be one way of containing the situation).

If following a mental health assessment it is considered that an informal Service User who has refused to consent to a search is not detainable, then staff should consider:

If the Service User is well enough, asking the Service User to leave the premises

Telephoning the Police if there is evidence of a breach of the peace, refusal to leave, some other crime is suspected of being committed or if there is a perceived risk to the public.

Whilst awaiting the consent of the RC, Clinical Director or SHO or arrival of the Police the Service User should be kept under close supervision and separated from other Service Users where possible.

6.4 Children

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.

6.5 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. Any firearms or illegal items found must be reported to the police immediately. Any service user refusing to comply with the policy must be asked to leave immediately.

6.5 Visitors

Visitors will not be searched under the remit of this policy. As occupiers of the premises, the Trust has the right to direct its staff to search any property being brought in to the ward by visitors for patients. If staff have any suspicions about visitors bringing in prohibited items for patients, they can be refused access to the ward and asked to leave. Alternative options which may be considered by staff are supervision of visits or searching of the patient following the visit where a prohibited item is suspected of being passed over.

6.4 Police Powers and Assistance

Police Search Powers

Various Acts of Parliament give the Police powers to search individuals and property. Such powers usually depend on reasonable grounds for suspicion and must be applied according to the circumstances of each individual case. Generally speaking the police do have powers to search for illegal drugs within the Misuse of Drugs Act 1971, and that power extends to public and private premises, subject to certain conditions being met. In relation to offensive weapons the police only have power to search for such weapons

if they are being carried in public. Also general police powers of search can only be carried out in public. The police, however, do have a power of search whether in private or public after arresting an individual for an offence.

“Reasonable grounds for suspicion” is defined at Appendix 9 – Definitions, Meanings and Terms.

Police Assistance

Any search conducted by health staff should be carried out with the minimum force necessary. In the case of searching for illegal drugs or an offensive weapon it may be necessary to seek police assistance. Staff should risk assess whether the police are required at the search stage. If the drugs can be located or the weapon found and no risks are posed, and evidence will not be lost then there is no need to involve the police at the search stage. Where it is anticipated that the search will pose risks of harm to the individual or staff, contact should be made in the first instance with the on-call Senior Manager, with a view to requesting police assistance. If a decision is made to request police assistance, contact should be made with the police via a supervisor at the Police Headquarters Communications Centre, Telephone no. 01768 213814. If agreement is reached for police involvement, the supervisor at the communications centre will refer the matter on to the local duty Area Inspector or Sergeant for action.

In relation to articles that may harm the individual or staff, the police will have no power to search for such articles unless the individual is in a public place. However after risk assessment by health staff, if it is determined that there is a risk of violence if a search was carried out solely by health staff, then police assistance should be sought in accordance with the “Joint Operational Protocol for Police Assistance - Mental Health Act 1983 Protocol” (See Appendix 6).

6.5 Searches - General

At least two members of staff must be present throughout the search one being a senior member of staff (both of the staff members should be familiar with this policy).

If any belongings are removed following a search, the Service User must be informed of the whereabouts and issued with a receipt for the same.

The members of staff involved in carrying out the search, should ensure that the proposed search uses means proportionate to the need and does not involve unreasonable risk of injury to any person or serious damage to the Service Users property.

If the Service User is thought to have secreted any object internally, examination should be carried out by a Medical Officer in a properly equipped environment, example A & E.

The Service User should be present, where possible, in the case of searches involving personal belongings not on the person of the Service User.

Due regard should be taken in respect of the Service Users gender, ethnicity and religion.

At the end of the search, staff should reiterate the reasons for having undertaken the search.

6.6 Mandatory Conditions

Before a search for illegal or dangerous weapons, articles or substances takes place a full risk assessment should take place between the Senior Health professional on duty on the ward and other ward staff to determine whether this can be completed without a risk of harm to the Service User, other Service Users or Health staff.

In some circumstances the risks to the person or others may be so serious that it would be appropriate to seek assistance from the police. Any such request for assistance from the police should be identified, if possible, at the initial agreement to search stage. All the above issues should be documented in case records as well as an incident form being completed, and any police assistance should be sought in accordance with the "Joint Operational Protocol for Police Assistance - Mental Health Act 1983" (See Appendix 6).

Staff will ensure that they do not expose themselves or others to a risk of harm whilst putting this procedure into practice. Where there is any doubt in relation to perceived risks of harm to anyone the Police will be asked to assist.

Where detention under S.136 of the Mental Health Act 1983 has been invoked by the Police and the detained person arrives at a Trust ward the senior nurse in charge must clarify whether the detained person has been searched by the Police. In those cases where a search has not taken place the escorting Police Officer will give reasons for this to the senior nurse and document those reasons on Form 136(1) (see Appendix 6). The senior nurse will endorse the Service Users case notes with this information.

In any other case the following search procedure will be adopted.

6.7 Incident Reporting

Where staff have intervened without the Service Users consent, it is important that the Trust maintains central records.

All searches (with or without consent) must be recorded in the Service Users clinical record detailing the time, date, reason for search and outcome. Where a Service User has refused, the record must also state reason for refusal including evidence as to mental capacity. An electronic Incident Form should also be completed on the Ulysses

system and Consent/Authorisation to Search Form should be completed on all occasions.

The person in charge or their Deputy will inform their Line Manager of all searches completed and outcomes of the same as soon as possible after the event.

6.8 Searching of Room/Belongings

(Provided the mandatory conditions have been completed)

Where there are reasonable grounds to suspect a Service User is in possession of, or is taking or supplying an illegal drug or substance or other harmful substance, then he/she is liable to be searched as well as their room and belongings.

The Service User will be fully informed of any decision to undertake a search of his/her room/property. Members of staff will always seek to secure the consent of the individual to the search and invite them to be present. The proceedings will be recorded in the nursing and medical notes.

In circumstances where the Service User is unable to give consent, then assistance and advice may be sought from the person's advocate and/or relative carer.

When searching belongings, the person must always be allowed to witness this. They should always be offered the opportunity to have an independent person present.

The search should be carried out taking care not to damage any property. Any damage should be fully documented and the person advised and assisted in claiming for the loss or damage.

If belongings are removed, they should be either kept or disposed of in accordance with guidance in Appendix 5, and the Service User must be informed of where they are to be kept. Any items or substances removed should be fully documented and the Service User kept informed. The Service User will be given a receipt for all items removed.

Any confiscated items which have been held for safekeeping by staff, may be returned to the service user on discharge if appropriate. However this will be subject to individual risk assessment at the time of discharge and will require appropriate risk management plans to be in place.

Illegal, harmful and prescription drugs or substances will be disposed of in accordance with Appendix 5.

6.9 Personal Search

(Provided the mandatory conditions have been completed)

In conducting a search of the person of any Service User the following must apply:

- The Service User must be given a full explanation as to why a search of person is considered necessary;
- The search should be conducted in such a way so as to ensure maximum privacy and dignity for the Service User;
- The search must be carried out with the minimum of force necessary, taking into consideration the safety of staff and other Service Users.
- Where it is deemed appropriate to undertake a search of a Service Users person, unless urgent necessity dictates otherwise, two staff members will be involved in the search and at least one will be of the same sex as the person being searched. One must be a registered nurse.
- Where staff are unsure of a person's gender, they should, where possible, ask discreetly which gender the person would prefer or be most comfortable being searched by. They should then comply with the patient's preference immediately or as soon as is practicable, unless there are genuine concerns in relation to staff /patient safety. This is covered by the Equality Act 2010 (Formerly the Sexual Discrimination Act (Gender Re-assignment Regulations 1999)).

In order that the Service Users dignity is respected Service Users should be taken into a private room for any search to be undertaken.

- Searching must be undertaken by a staff member the same gender as the service user and must be witnessed by another staff member (of either gender).
- This procedure should be undertaken in a private area.
- Check head gear / jewellery.
- Staff will commence at the head, paying particular attention to areas such as lapels using the flat open hand. This is a firm, continuous contact movement, rubbing movement rather than patting movement.
- The next step is to search the arms from the shoulders to the fingers tips, paying attention to arm pits and wrist bands on shirts and jumpers.
- Once arms are completed, commence search of front of body from neck to waist band (male). For female service users staff must NOT search breast area but search from under breast area to waist band.
- Following that, there should be a side of body search, from arm pits to waist band, and then repeat on the other side
- Ask the service user to turn around and rub down their back from collar to feet, paying attention to rear pockets.
- Ask the service user to turn around, start at waist band rub down each leg from groin to the ankle (staff must NOT search genitals area).
- Once ankle area reached, if concern regarding substances that could be hidden, shoes can be removed and feet checked. Under normal circumstances shoes / footwear do not need to be removed.
- Staff can ask people wearing religious head gear / facial covering to remove in private with gender appropriate staff. Awareness/respect for cultural norms is important.

It is not considered appropriate to undertake a physical search of Service Users where there is a risk of a charge of assault and/or the potential risk of needle stick type injuries to the searcher. A

Service User can be asked to empty the contents of their pockets in the presence of two staff – one of which should be a first level nurse and same sex as the Service User. Where the person refuses to co-operate or staff remain concerned about the safety of the individual and that of others then the RC or duty doctor in consultation with the nursing staff, will plan and action changes in the individuals care. All such changes should be recorded in the medical and nursing notes. Any items removed from the person must be documented and the Service User issued with a receipt.

Procedures: Policy and Procedure for Dealing with Possession, Abuse or Supply of Illegal Drugs or Other Harmful Substances Whilst on Psychiatric Wards

6.10 Possession or suspected possession by Service Users of illegal drugs or other harmful substances

Service Users will be informed on admission that where anyone is suspected, or confirmed to be in possession of, or taking or supplying illegal drugs on the premises (including hospital grounds) the matter will be reported to the police.

Where there is reasonable grounds to suspect that a Service User is in possession of an illegal drug or other harmful substance, then the most senior professional on duty on the ward, together with another member of staff should request the Service User to hand over the drug or harmful substance.

Where the Service User either denies possession or refuses to hand over the drug or substance, the senior professional in the presence of another member of staff:

Should explain to the Service User why possession is suspected and explain to the Service User the staff's reasons and rights to proceed with a search of the Service Users person and property, room etc. if the suspected drug or substances are not handed over.

Where a Service User refuses to allow a search to proceed, the senior professional should contact immediately the Service Users Consultant or Consultant on call, and senior manager to inform them of the situation and contact the Police.

Where a Service User suspected of possessing illegal drugs or other harmful substance refuses to hand them over and is warned that a search of their person or property will be carried out, and still refuses, then a search should be arranged by the senior professional on duty on the ward in accordance with the policy "Search of Service Users person, rooms and belongings" (Part 3 of this document).

Where possession by a Service User of illegal drugs or other harmful substances has been established, the senior nurse should inform the Service Users Consultant or Consultant on call.

An untoward incident report should be completed and sent to the Risk Manager of the relevant Trust.

6.11 Possession or suspected possession by visitors and others of illegal drugs or other harmful substances

Where there is evidence to suspect that a visitor or person other than staff or Service User is in possession of illegal drugs or other harmful substance, the senior professional on duty on the ward together with another member of staff should:

Explain to the visitor why possession of an illegal drug or other harmful substances is suspected

Request the visitor to hand over the drug or substance.

Where the visitor or other person denies possession or refuses to hand over the drug or substance, the senior professional has no legal right to pursue the matter further, and will:

Consider informing the police of the matter - police have authority to conduct search of visitors

Consider asking the visitor to leave the premises - acting in the best interests of the Service User and others.

Inform the Senior Manager on duty of action being taken and complete an Untoward Incident Form.

6.12 Safe Custody of Illegal drugs and other harmful substances handed over/recovered from patients or visitors

Where illegal drugs or other harmful substances have been recovered or handed over to staff resulting from the above procedures, the Senior Professional will:

Place the drug or substance in an exhibit bag provided by Cumbria Constabulary if available or in another suitable container such as sealed bag or envelope. The following details will be endorsed on the bag and an entry in the Service Users case notes will also be made with the same details.

- Date and time recovered
- Where recovered
- From whom
- By whom
- Description of item
- Where stored

The confiscated item/ substance will be locked away for safekeeping – preferably not in the ward medicines or controlled drugs cupboard, but in a locked safe place.

The proforma statement at Appendix 4 will be completed and handed over to Police, together with the seized drugs, on their arrival at the ward.

Where other harmful substances are seized or recovered from a Service User or visitor they will be placed in clear polythene bag if available (not Police exhibit bag) or in a sealed envelope with a label attached giving the same details above. An entry in the Service Users case notes will also be made with the same details.

This will then be placed in a secure, safe place pending return to the Service User, the Service Users family, visitor or other authorised disposal. Where the substance / item is not illegal, this will depend upon the risk assessment made by the Multi-disciplinary team as to the risk posed to the service user by the return of these items, and by the service user's capacity in this area. All illegal items/ substances will be handed over to the police for disposal.

A receipt will be given to the person from whom any illegal drug or other harmful substance has been seized or recovered, taking care to describe the substances in general terms unless they have been specifically identified.

Inform senior manager on duty of any drug or other substance taken into custody. The Police will only be informed about illegal drugs and illegal items.

Incident reporting will be completed for the Risk Manager of the Trust where an illegal drug or other harmful substance has been seized or recovered from a Service User or visitor

6.13 Final disposal of illegal drugs and other harmful substances handed over/recovered from patients or visitors

Illegal drugs and other harmful substances, which have been handed over or recovered from Service Users or visitors, will only be disposed of in accordance with the procedures at **Appendix 5**.

Illegal drugs and other illegal substances will be handed to the Police. Before any other harmful substances are disposed of, advice will be sought from the senior manager to determine whether authority for disposal has been given.

The procedure for disposal of those prescription drugs not returned to the Service User or their family is that they should be sent to the Pharmacy Department, Cumberland Infirmary, Carlisle (North Cumbria), West Cumberland Hospital (Whitehaven), Westmorland General Hospital (Kendal) and Furness General Hospital (Barrow) for destruction as clinical waste.

The senior professional on the ward, together with a witness, should jointly check and verify and record the quantity of prescription drugs sent to the Pharmacy for destruction.

6.14 Service User Monitoring

Where a Service User is suspected of taking or supplying an illegal drug or other harmful

substance and a positive search has been carried out, consideration should be given to the following.

A full MDT meeting as soon as possible to discuss the most appropriate treatment plan.

Leave (if relevant) suspended until the clinical team feel that the risk of the Service User acquiring further illicit substances has been significantly reduced.

Future visits from friends and relatives may only take place when accompanied by a member of staff.

Any Service User suspected of consuming an illegal drug or other harmful substance should be carefully monitored and may be asked to provide a urine sample. The RC should be informed of any adverse reactions and a search of the Service Users person, property and room considered if a positive sample was provided.

Policy and Procedure for Dealing with Possession or Suspected Possession of Illegal or Dangerous Weapons or Articles Whilst on Psychiatric Wards

6.15 Possession or Suspected Possession by Service Users of Illegal Weapons or other Dangerous Articles

Where there are reasonable grounds to suspect that a Service User is in possession of an illegal weapon (firearm, explosive, knife etc) or other dangerous article, then the Police will be asked to assist urgently in accordance with the “Joint Operational Protocol for Police Assistance - Mental Health Act 1983” (See Appendix 6 for assistance).

Staff will ensure that they do not expose themselves or others to a risk of harm whilst putting this procedure into practice. Where there is any doubt in relation to perceived risks of harm to anyone the Police will be asked to assist.

Any search conducted will be arranged by the senior professional on duty on the ward and in accordance with the policy “Search of Service Users person, rooms and belongings” (Part 3 of this document).

Where possession, by a Service User, of illegal weapons or articles has been established, the senior nurse on duty will inform the Service Users RC or Consultant on call.

An electronic incident report should be completed as per the trust incident reporting guidance.

6.16 Safe Custody of Illegal weapons or other dangerous articles handed over/recovered from Service User

In the case of illegal weapons or articles the proforma statement at **Appendix 4** will be completed and handed over to the Police, together with the seized illegal weapon or article upon their arrival at the Hospital/ward

A receipt will be given to the person from whom any weapon or article has been seized or recovered

The Senior Manager on duty will be informed about any illegal weapon or article taken into custody

Although the Police will only normally be involved where illegal weapons or articles are seized or recovered, they may be involved if called upon to assist where other dangerous (but legal) weapons or articles are concerned and Health staff require the assistance of the Police to seize or recover the item, if possession by the Service User presents a risk of harm to the Service User, other Service Users or Health staff. The Police if called upon will act in accordance with the “Joint Operational Protocol for Police Assistance - Mental Health Act 1983” (see Appendix 6 for details).

An electronic incident form will be completed for the Risk Manager of the Trust where an illegal weapon or article has been seized or recovered from a Service User.

6.17 Final Disposal of Illegal and Other Dangerous Weapons and Articles Handed Over/Recovered from Service Users

Illegal and other dangerous weapons and articles which have been handed over or recovered from Service Users will only be disposed of in accordance with the procedures at Appendix 5.

Illegal weapons and articles will be handed to the Police. Before any other dangerous weapon or article is disposed of, advice will be sought from the Senior Manager to determine whether authority for disposal has been given.

The Police will be aware of Public Protection issues in cases where they are called upon to deal with illegal or other dangerous weapons or articles. Where dangerous weapons and articles are seized or recovered without assistance from the Police consideration will be given whether the Public Protection criteria at Appendix 10 should be implemented.

6.18 Use of Police Dogs within Mental Health Wards and Grounds

The use of Police search dogs will be used on very rare occasions to search for drugs. The discretion to request a Police search dog will be the responsibility of the attending Police Officer(s) and only after consultation with the Ward Manager/Senior Nurse and a Police Supervisor.

Where it is decided that a Police search dog will be used the procedure at Appendix 7 – “Police Search Dogs” will be adopted.

Where Police dogs are used an untoward incident form will be completed and sent to the Risk Manager of the relevant Trust.

6.19 Criminal Offences

It is an offence to carry offensive weapons and certain knives in public. See Appendix 9 - Definitions, Meanings and Terms.

Any criminal offence should be reported to the Police without delay

6.20 Record Keeping

Records should make clear statements regarding:

- The elements of risk highlighted which informed the decision to require a search. •
Reasons why any decisions to enforce a search are made.
- The outcome of the search including any items/substances removed, and their disposal. Also any damage caused to persons belongings during the process of search.
- Any physical and psychological effects which are observed in relation to the person and any subsequent changes in the care of that person (incident forms should be completed as necessary).
- All concerned should review the incident including the Service User. This will ensure that effective evaluation and best practice is promoted.
- Identify times of searches, staff involved, names of Police Officers attending.

6.21 Patient information on searching

All inpatient units should display clear information for patients and visitors to the unit informing them that the unit undertakes searches of patients, their property and the ward environment. This should also be explained to patients during the admission process

Indemnity

The Trust appreciates that if a search is carried out against the wishes of the Service User, the member of staff carrying out such a search may be exposed to the risk of a civil claim for damages for assault and battery and false imprisonment. However, if the members of staff have acted reasonably, the Trust will indemnify them against any claim in the event of proceedings being brought against them.

In these circumstances where proceedings are taken against the Trust, it is confirmed that the Trust will not seek to claim any contribution or indemnity from the member of staff concerned.

Staff would be deemed to have acted reasonably if:

- They had evidence for believing that the service User possessed an article or substance

which was dangerous in itself;

- They had grounds for believing that the Service User was likely to use the article or substance in any way which would injure themselves or others; The force used by staff is commensurate with the violent reaction of the Service User.
- Where it might have been appropriate to await the arrival of the police, the delay caused by the same would have the Service User or other persons at risk of harm or injury.
- Staff have had the appropriate training in searching procedures and kept up to date with technique.

7 MONITORING COMPLIANCE WITH THIS POLICY

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
To review 5 admissions of patients from each ward against the process in the policy or other harmful	Review of records weapons entered on the trust system are monitored.	Quality and Safety Lead and network manager (acute inpatients)	Annual	Acute care forum (operational)	Acute care forum.

APPENDIX 1 - PERSONAL SEARCHES (MENTAL HEALTH ACT 2015 CODE OF PRACTICE)

Managers of hospitals and mental nursing homes admitting Service Users under the Act should ensure that there is an operational policy on the searching of Service Users and their belongings. The policy should be based on legal advice.

The purpose of the policy is to meet two objectives which may, at least in part, be in conflict: Firstly the creation and maintenance of a therapeutic environment in which treatment may take place; and secondly, the maintenance of the security of the establishment and the safety of Service Users, staff and the public.

The policy may extend to routine and random searching without cause, but only in exceptional circumstances, for example, where the dangerous or violent criminal propensities of Service Users create a self-evident and pressing need for additional security.

In all cases, the consent of the Service User should be sought before a search is attempted. If consent is duly given, the search should be carried out with due regard for the dignity of the individual and the need to ensure maximum privacy.

If consent is refused, the RC for the Service User should first be contacted so that any clinical objection to a search by force may be raised. If no such objection is raised, the search should proceed as set out in para 25.8.

If a clinical objection is raised by the RC, but the person empowered to search wishes nonetheless to proceed, the matter should be referred to the medical director of the hospital for decision.

Any delay in respect of paragraphs 25.5 and 25.6 should be kept to a minimum. While the matter is being resolved, a Service User should be kept under observation and isolated from other Service Users. The Service User should be told what is happening and why, in terms appropriate to his or her understanding.

If a search is to proceed without consent, it should be carried out with due regard for the dignity of the individual and the need to ensure maximum privacy. The minimum force necessary should be used. A member of the same sex should carry out a search of a Service Users person unless necessity dictates otherwise.

If items belonging to a Service User are removed, the Service User should be given a receipt for the items and informed where they are being kept.

APPENDIX 2 - RECORD OF SEARCH (EXAMPLE FORM)

TRAINED NURSE _____

SEARCH CARRIED OUT BY

PLACE OF SEARCH

ITEMS REMOVED

WHERE STORED

POLICE INFORMED

YES / NO

TIME & BY WHOM

_____ **AM / PM**

ACTIONS TAKEN

COPY GIVEN TO SERVICE USER BY

POLICE SIGNATURES

(If appropriate/evidential continuity only)

SHIFT LEADERS SIGNATURE

COPIES TO: SERVICE USER

SERVICE USERS NOTES

MANAGER

ATTACH TO PRINT OUT OF INCIDENT REPORT.

APPENDIX 3 - FORM TO BE COMPLETED WHEN SERVICE USER FOUND TO BE IN POSSESSION OF ITEMS CONSIDERED DANGEROUS, OFFENSIVE OR ILLEGAL.

I..... (Service Users name) hereby confirm that I have been informed by the Trust's staff the item(s) listed below, or the possession of them, appear to be illegal and/or may cause harm to me or others. I agree to hand the said item(s) over to Cumbria Partnership NHS Foundation Trust.

Description of Item(s)

I understand that the item(s) listed may not be returned to me and hereby give consent for the item(s) to be destroyed by Cumbria Partnership NHS Foundation Trust if deemed necessary. I understand that the Trust has discretion to notify the Police that the item(s) have been found in my possession and, if this is done, that the item(s) will be handed over to the Police and not returned.

_____ (Signature of Service User)

_____ (Date)

_____ (Time)

(1) _____ (Signature of Member of Staff)

_____ (Name/Designation [Block Capitals])

(2) _____ (Signature of Member of Staff)

_____ (Name/Designation [Block Capitals])

One copy to be given to Service User
One copy to be kept with Case Notes

APPENDIX 5 - DISPOSAL OF POTENTIALLY DANGEROUS OR ILLEGAL ITEMS FOUND IN SERVICE USERS POSSESSION, ROOM OR BELONGINGS

- **Illegal Weapons and Articles** To be retained by staff and kept secure until transferred to Police custody
- **Other Dangerous Weapons/Articles** To be retained by staff and kept secure. May be returned to relatives or patient on discharge, if appropriate, at discretion of Consultant
- **Illegal Drugs/Substances** To be retained by staff and kept secure until transferred to Police custody
- **Other Harmful Substances** To be retained by staff and kept secure. May be returned to relatives (or Service User on discharge), if appropriate, at discretion of Consultant
- **Prescribed Medication** May be returned to relatives (Service User on discharge) if the prescription is still valid. If prescription is not valid will be returned to Pharmacy for disposal
- **Alcohol** Retained by staff on ward and at the time of discharge, returned to patient if appropriate, at discretion of Consultant.

APPENDIX 6 - PARA 3.11 JOINT OPERATIONAL PROTOCOL (SECTION 136 MENTAL HEALTH ACT 1983)

It will be the responsibility of the police officers that convey the person to a place of safety to ensure that the person is searched in accordance with Section C, Part 4 of P.A.C.E, Codes of Practice. At times a search may not be necessary or appropriate and if it is not carried out an officer should be able to outline the reasons to any person who is to take over the responsibility for the person ie: hospital staff and these should be documented on Form 136(1). It will also be the officer's responsibility to perform a PNC and a local Cumbria Constabulary CMIS intelligence check on the person (if their details are known). The actions of searching and carrying out intelligence checks will be especially relevant in managing any potential risks that the person may pose to police and health staff and inform the decision about whether police attendance is necessary at a hospital place of safety. On all occasions the relevant information obtained from any intelligence checks should be passed to the hospital staff or attending doctors.

PARA 3.18 JOINT OPERATIONAL PROTOCOL FOR POLICE ASSISTANCE (Mental Health Act 1983)

Involvement of the police in physical restraint and administration of medication without consent within hospital premises after admission

Physical restraint will only be used as a last resort and then only to the degree necessary to ensure the safety of the Service User and others. If required, physical restraint is not the sole responsibility of the police but of all the persons present.

APPENDIX 7 - USE OF POLICE DRUGS DOGS WITHIN MENTAL HEALTH WARDS AND GROUNDS

Drugs search dogs will only be used if

- a) Requested by a police officer and
 - b) Agreed by the ward managers/Senior Nurse, following a written risk assessment (which must involve advice/guidance from a drugs search dog handler) and the following conditions apply.
- 1) Will apply to those searches where the risk to any person is serious and only under the authority of S.18 of the Police & Criminal Evidence Act 1984 (PACE), as amended by S. 12 and Schedule 1 of the Criminal Justice Act 2003. S.32 (PACE), as amended by the Criminal Justice & Public Order Act 1994, any powers within a Magistrates' Court warrant (i.e. a Magistrate is satisfied that the search is proportional and lawful) and any future legislation which gives the Police new search powers. Exceptions to this guideline would be extremely rare, as would the actual warrant based requests.
 - 2) Medical staff/managers must be aware of health and other risks associated with use of a drug search dog and give informed and written consent. (See risk assessment)
 - 3) The risk assessment must include specific reference to the nature of ward/building/grounds where the search is intended. This should include an agreed plan to eliminate all possibility of contact between a drugs search dog and Service Users during the course of the search (in these rare circumstances it may entail the closure of a ward or a significant part of it or area of ground).

The above guidelines are meant to result in very rare use of drugs search dogs usually where a serious offence is suspected and/or the offence is being investigated.

APPENDIX 8 - DEFINITIONS, MEANINGS AND TERMS

RMO is defined in section 34 of the mental health act 1983 as:

(a) in relation to a Service User (who is) liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment (or who is to be subject to after-care under supervision after leaving hospital), the registered medical practitioner in charge of the treatment of the Service User.

(b) in relation to a Service User subject to guardianship, the medical officer authorised by the local social services authority to act (either generally or in any particular case, or for any particular purpose) as the responsible medical officer.

Searches requiring reasonable suspicion

Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and / or intelligence which are relevant to the likelihood of finding an article of a certain kind.

The person concerned can never support reasonable suspicion on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour. For example, a person's race, age, appearance, or the fact that that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.

Searches are more likely to be effective, legitimate, and secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up to date and accurate intelligence or information is communicated to officers and they are well-informed

Illegal Drug

For the purposes of this policy and procedure an illegal drug will be any drug in the possession of an individual (without prescription or other lawful authority) and defined as a "Controlled drug" (Class A, Class B and Class C) within the Misuse of Drugs Act 1971. There are over 250 drugs listed (within this act that comes under the definition of "Controlled drug").

Section 8 Misuse of Drugs Act 1971

A person commits an offence if being the occupier (someone entitled to exclusive possession and having control of activities therein) or concerned in the management (Not necessary to prove a legal right to be on the premises, but has control of activities therein of any premises (not defined but would probably cover buildings and their grounds) he/she knowingly (either actual knowledge or wilful blindness)

permits (requires actual knowledge of the circumstances) or suffers (in a position to prevent it but does nothing).

UNLAWFUL PRODUCTION OF A CONTROLLED DRUG, OR ATTEMPTS
UNLAWFUL SUPPLYING OR ATTEMPTING OR OFFERING TO SUPPLY A
CONTROLLED DRUG, PREPARING OPIUM FOR SMOKING,
SMOKING CANNABIS, CANNABIS RESIN OR OPIUM

Firearm

For the purposes of this policy and procedure a firearm is any weapon defined as a firearm by the Firearms Act 1968 namely

A **LETHAL** (one capable of causing serious wound or death, although not necessarily designed for that purpose) **BARRELLED** (must have an enclosed tube or cylinder but the missile need not be discharged by explosion or gas) **WEAPON** of any description from which any shot, bullet or other missile can be discharged and includes

- a) **Any prohibited weapon**, whether it is lethal or not; and
- b) **Any component part** of such a lethal or prohibited weapon; and
- c) **Any accessory** to such weapons designed or adapted to diminish the noise or flash caused by firing the weapon.

Ammunition under the same act means ammunition for any firearm and includes grenades, bombs and other like missiles, whether capable of use with a firearm or not, and also includes prohibited ammunition.

Offensive Weapons Legislation and Definitions

Prevention of Crime Act 1953. Section 1 (1) provides;

‘Any person who without lawful authority or reasonable excuse, the proof whereof shall lie with him, has with him in any public place any offensive weapon shall be guilty of an offence’.

‘Offensive weapon’ means any article made or adapted for use causing injury to the person, or intended by the person having it with him for such use by him or by some other person’.

An offensive weapon can be anything made as a weapon (e.g. a gun or sword), anything adapted for use as a weapon (e.g. a walking stick weighted with lead shot) or anything carried for use as a weapon (e.g. can of hairspray, a rolled newspaper, a length of chain etc. This covers all those situations where something was carried to cause harm.

The Restriction of Offensive Weapons Act 1959 banned the carrying, manufacture, sale, purchase, hire or lending of ‘flick-knives’ (knives operated by a button or spring on the handle, also called switchblades or automatic knives) and ‘gravity knives’ (knives which drop open through gravity when a mechanism releases it).

The Prevention of Crime Act 1953 section 1 (4) provides that;

‘A public place includes any highway and any other premises to which the public have or are permitted to have access, whether on payment or otherwise’.

This definition has been discussed in numerous court cases and an exact definition has proven evasive. The current position is contained in, amongst others, *Knox v Anderton* (1982). Here the court held that a ‘public place’ included premises to which the public could gain access without hindrance or barriers or notices restricting access.

The Criminal Justice Act 1988 also contains a list of prohibited weapons. ‘Balisongs’ or butterfly knives (where two split handles swing like wings around the knife to close or open it) are as illegal as automatic knives.

Criminal Justice Act 1988 significantly affects the carrying of knives in the UK. Section 139 of the Act covers the carrying of an article with a blade or sharp point in a public place.

All fixed blade (sheath knife style) knives, all locking folders and folders with a blade over three inches long are illegal to carry on a daily basis.

Under section 139 (4) it is a defence for the accused to show they have good reason or lawful authority to carry the knife in a public place. Secondly under section 139 (5) it is a defence to prove the knife is carried for work, religious reasons or as part of national costume.

In summary no knives, other than non-locking folders with a blade under three inches should be carried by anybody on a daily basis unless you need it for work, for your religion, for your national costume or you can supply some other good legitimate good reason.