

Policy:

NPCS 010 - Mental Health Act Code of Practice Equality and Human Rights

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|--------------------------------|---|
| Executive Director Lead | Director of Nursing, Professions and Operations |
| Policy Owner | Head of Equality and Inclusion |
| Policy Author | Head of Equality and Inclusion |

| | |
|--|------------|
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Summary of policy

To set out how the Trust intends to meet its legal duties under the Equality Act 2010 and the Human Rights Act 1998 with reference to the Mental Health Act 1983 as required by the [Mental Health Act Code of Practice](#) January 2015 amended October 2017.

The changes made to this version of the policy are summarised on page 3 (amendment log).

| | |
|------------------------|---|
| Target audience | Staff with responsibilities under the Mental Health Act 1983 and associated Code of Practice. |
|------------------------|---|

| | |
|-----------------|--|
| Keywords | Equality; Human Rights; Mental Health Act, Code of Practice. |
|-----------------|--|

Storage

This is Version 3 and is stored and available through the SHSC Intranet/Internet.

This version supersedes the previous Version [NPCS 010 5 July 2018].

Any copies of the previous policy held separately should be destroyed and replaced with this version.

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Version Control and Amendment Log

| Version No. | Type of Change | Date | Description of change(s) |
|-------------|--|--------------------|--|
| 1 | New draft policy created | May 2016 | New policy commissioned by the Mental Health Act Policy group/ Requirement under the mental health act code of practice s.3.15 |
| | Ratification and issue | October 2016 | Ratified by EDG |
| 2 | Updates to policy | December 2017 | Front page - feedback on implementation amended to Mental Health Act Committee |
| | Ratification and issue | July / August 2018 | Amendments to the introduction - incorrect reference to section three rather than chapter three of the code amended. New -Appendix inserted Appendix H – Policy Governance Chart And reference in the policy to its purpose i.e. 6..4.6 . An overview of how key areas in respect to 6.1 and 6.2 above will be overseen and assured is set out in Appendix H 4. inclusion of ‘Rights’ and an amendment to the introduction to make clearer reference to Human Rights |
| 3 | Review / consultation/ approval / ratification / issue | October 2020 | Full review completed as per the Trust’s Policy Governance Process. The amendments made are <ul style="list-style-type: none"> • General formatting update • Removal of some elements of Appendix C due to the processes / groups no longer being in place • Confirmation through the Mental Health Legislation Committee of agreement with changes |

1. Introduction

Equality, Inclusion and Human Rights are at the heart of the Trust's values of Respect, Compassion, Partnership, Accountability, Fairness and Ambition. Services and practices will always be undertaken in line with these values, which have been agreed in partnership with staff, people who use Trust services, carers and families.

The Trust is committed to taking forward the Equality Act 2010 Public Sector Equality Duty by ensuring that when undertaking services relevant to the Mental Health Act 1983, regard will be paid to:

- Eliminating discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010.
- Advancing equality of opportunity between people who have protected characteristics¹ and people who do not share protected characteristics and
- Fostering good relations between people with protected characteristics and people without.

We are also mindful that the provisions of mental health legislation impact on a person's Human Rights and if not applied lawfully may breach these rights. The principles that underpin Human Rights (Fairness, Respect, Equality Dignity and Autonomy) are essential principles that underpin the services we provide, irrespective of association with the Mental Health Act.

This policy specifically focuses on these areas with reference to Chapter 3 of the Mental Health Act 1983 Code of Practice and specifically item 3.15 which expects that the Trust will have a Human Rights and Equality policy for service provision and practice under the Mental Health Act 1983.

2. Scope

This policy is Trust wide in terms of any services and functions relevant to the Mental Health Act 1983.

3. Purpose

The purpose of this policy is to clearly set out how the Trust intends to meet its legal duties under the Equality Act 2010 and the Human Rights Act 1998 with reference to the Mental Health Act 1983 and Associated Code of Practice Chapter 3

4. Definitions

4.1 The Act – The Mental Health Act 1983.

4.2 The Code of Practice – The Mental Health Act 1983 Code of Practice.

4.3 Hospital Managers –The organisation in charge of the hospital i.e. SHSC NHS Foundation Trust itself

¹ The Protected Characteristics are: Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation

5. Detail of the policy

The broad overview of this policy is as described in the introduction.

6. Duties

Hospital Managers are responsible for ensuring that services and practices relevant to the Mental Health Act 1983 are undertaken in line with The Act and Code of Practice. They must have a good knowledge of this policy and its relevance to the responsibilities of Hospital Managers. Hospital Managers are responsible for the governance associated with this policy. This will be delegated through the Trust Mental Health Legislation Committee.

6.2. The Director of Nursing, Professions and Operations has delegated responsibility for ensuring that clinical practice is carried out in accordance with The Act and Code of Practice.

6.3. Directors are responsible for ensuring that practices within their service areas are carried out in accordance with The Act and Code of Practice.

6.4. Directorate Clinical and Service leads must be familiar with this policy and ensure that governance related to the policy is implemented in their area of responsibility.

6.5. Service Managers must have good knowledge of the policy and ensure that the policy is applied in practice in their areas of responsibility.

6.6. Ward/Team Managers are responsible for ensuring that staff are aware of the policy and that it is applied in their areas of practice. They are also responsible for monitoring such practices.

6.7. The Mental Health Act Administration Manager is responsible for monitoring compliance with The Act and the Code of Practice

7. Procedure

7.1 Equality

The Trust will take account of all relevant sections of the Equality Act 2010 and related secondary legislation when carrying out functions associated with The Act. This includes, but is not limited to, the duties of the Trust under section 149 of the Equality Act 2010 and provisions in the Act relevant to Disability.

The Trust will aim to eliminate unlawful discrimination and advance equality by:

- Ensuring that systems are in place to review the procedures and practices associated with The Act and to ensure that they do not directly or indirectly discriminate within the terms of the Equality Act 2010.
- Making changes to procedures or practices to prevent unlawful discrimination where concerns are identified.
- Ensuring that the systems that are in place to provide feedback on services are accessible, take account of the diversity of people using Trust services and are

monitored to ensure that the feedback that is being considered is representative of all persons who may require and use Trust services.

- Recognising and responding to the diversity of people using our services and their communities, families and friends in assessment and care planning.
- Collecting information relevant to the ethnicity, gender, disability, age and sexual orientation of people using Trust services to monitor the impact of procedures and practices on groups protected under the Equality Act 2010.
- Publishing an annual report on the Trust's internet site concerning how information and data specific to service users affected by The Act has been used to monitor and provide high quality services, including data collected and reviewed on collaborative care plans.
- Having available and referring to the Yorkshire and Humber Protocol 'Providing Hospital Services to Trans Patients'.
- Complying with requirements and standards for single-sex accommodation.
- Specifically recording and reviewing incidents associated with race using 'Safeguard' – The Trust's incident reporting system.
- Having in place a 'Policy on Zero Tolerance of Harassment (Third Party)', that is aimed at addressing harassment which is not staff to staff related.
- Ensuring that information and advice is accessible with respect to language and culture. Where a person has a need for accessible information associated with a disability, this is recorded and provided.
- Ensuring that the need for an interpreter is recorded and interpreters are provided. This is to ensure that people have equal access to services, are empowered when they are using services and engaged and involved in decision-making
- Making adjustments to the way that practices and procedures associated with The Act are applied to address barriers that may be experienced by a Disabled person, whether this is associated with a mental or physical impairment. This may include making changes to the environment in which services are delivered, the way in which practices are implemented or making arrangements for access to specialist equipment.

7.2 Human Rights

The Trust will aim to empower people who use our services by recognising people's ability to recover and by working alongside individuals to support them in that journey, recognising potential and working with optimism and hope. The Trust recognises the legally enforceable rights of people using its services under the Human Rights Act 1998 and will take account of the Act and Code of Practice when carrying out functions associated with this policy.

This includes, but is not limited to:

- Ensuring that procedures and practices relevant to The Act are undertaken strictly in line with Human Rights law, guidance, good practice and principles.
- Ensuring that the Trust values; Respect, Compassion, Partnership, Accountability, Fairness and Ambition, are the guiding principles in the implementation of Trust policies associated with The Act.
- Embedding consideration of Human Rights law, guidance, good practice and principles in governance procedures and practices associated with The Act.

- Providing information about rights to people who use our services and their families and communities.
- Ensuring access to information about Advocacy and other third-party support and advice, and recording and sharing information where a person requires or uses Advocacy services.
- Providing information that is accessible (in terms of content and availability) relevant to policies associated with The Act and associated practice and procedures.
- Establishing, maintaining and monitoring systems and processes to support good decision-making where competing Human Rights need to be considered, and ensuring that decisions which may restrict a person's rights are necessary, proportionate and clearly recorded.
- Maintaining a programme concerning the reduction of restrictive interventions and ensuring that data relating to restrictive interventions is collected routinely and reviewed.
- Ensuring that any blanket restriction that is considered necessary and proportionate has been approved by the *Restrictive Intervention Group* on behalf of the Board.

7.3 Health Inequalities

The Trust recognises that many people who use its services may experience health inequalities and will aim to work in partnership with commissioners, people who use our services and other stakeholders to consider and address these.

7.4 Communication and Embedding Good Practice

- The Trust Statement on Equality and Human Rights and the Mental Health Act Code of Practice will be publicised and available (Appendix G).
- The Trust will maintain up-to-date knowledge of relevant legislation, associated guidance and case law and will make amendments to policies and practices in response to this.
- The Trust will provide training to staff so they consider Equality and Human Rights when they are undertaking activities and actions associated with The Act. This will include integrating Equality and Human Rights information into Mental Health Act training as well as specific training.
- The Trust will ensure that feedback on services is considered in a person- and community- centred context.
- The Trust will publish information in its Annual Equality and Human Rights Report that is relevant to this policy.
- An overview of how key areas, with respect to 7.1 and 7.2 above, will be overseen and assured is set out in Appendix C.

8. Development, consultation and approval

- The policy was drafted by the Head of Equality and Inclusion and was based on Chapter 3 of the Mental Health Act Code of Practice 2015. The Code makes suggestions for minimum requirements of the policy.

- The draft content was discussed by a Trust Mental Health Act Policy Group convened in 2015, now disbanded, to review policies in light of the revised Code of practice and was specifically reviewed by the Trust Lead Consultant for Mental Health Act 1983.
- The Mental Health Act Policy Group proposed that a task and finish group would be set up to define how the policy would be implemented in the Trust (The Mental Health Act, Equalities and Human Rights Act Group) chaired by the Head of Mental Health Legislation).
- This group met and agreed the policy governance process now described in Appendix C. Subsequently some additions were made to improve the 'policy statement' i.e. inclusion of Rights and an amendment to the introduction to make clearer reference to Human Rights these were discussed and agreed with the Head of Mental Health Legislation and agreed with the Mental Health Act Committee (as it then was) in December 2017.
- Appendix C has been updated following review of its effectiveness in terms of governance of this policy, changes in committee and meetings since 2017. These changes have been discussed and agreed with the Mental Health Legislation Committee

9. Audit, Monitoring and Review

| Monitoring Compliance Template | | | | | | |
|---|---|--|--|---|--|--|
| Minimum Requirement | Process for Monitoring | Responsible Individual/group/committee | Frequency of Monitoring | Review of Results process (e.g. who does this?) | Responsible Individual/group/committee for action plan development | Responsible Individual/group/committee for action plan monitoring and implementation |
| Assurance that the expectations of the policy are being met | Review through reports to the Mental Health Legislation Committee | Mental Health Legislation Committee | Annually, by report to the Mental Health Act Legislation Committee | Head of Mental Health Legislation | Head of Mental Health Legislation | Mental Health Legislation Committee |

The policy review date is November 2023 or earlier where legislation dictates or practices change.

10. Implementation Plan

| Action / Task | Responsible Person | Deadline | Progress update |
|--|---|-------------------------------|-----------------|
| Upload new policy onto intranet and remove old version | Policy Governance | 01/12/2020 | |
| Make parties identified in section 6 aware of the updated policy | Head of Mental Health Legislation and team managers | 31 st January 2021 | |
| Annual Report to Mental Health Legislation Committee | Head of Equality and Inclusion | February 2021 | |
| Overall accountability | Head of Mental Health Legislation | ----- | ----- |

11. Dissemination, Storage and Archiving (version control)

| Version | Date on website (intranet and internet) | Date of entry in Connect (all staff communication) | Any other promotion/ dissemination (include dates) |
|----------------|--|---|---|
| 2 | September 2018 | September 2018 | N/A |
| 3 | November 2020 | November 2020 | November 2020 |

This is Version 3 and is stored and available through the SHSC Intranet/Internet.

This version supersedes the previous Version 2 [August /2018].

Any copies of the previous policy held separately should be destroyed and replaced with this version.

All Word copies of final versions of policies can be obtained from Policy Governance.

12. Training and other resource implications

Training will be required associated with this policy this includes integrating Equality and Human Rights into Mental Health Act training as well as specific training. The mental Health Legislation Committee will consider the way to embed training on an ongoing basis currently the Trust training in respect of the MHA explicates the links between Human Rights legislation and mental health legislation.

13. Links to other policies, standards, references, legislation (associated documents) and national guidance

- [Mental Health Act 1983](#)
- [Human Rights Act 1998](#)
- [Equality Act 2010](#)
- [Mental Health Act Code of Practice 2015](#)
- All Trust policies associated with the Mental Health Act 1983
- All procedures associated with the Mental Health Act 1983
- The Accessible Information Standard

14. Contact details

| Title | Name | Phone | Email |
|-----------------------------------|-------------|--------------|--|
| Head of Mental Health Legislation | Anne Cook | Ext 64913 | Anne.cook@shsc.nhs.uk |
| Head of Equality and Inclusion | Liz Johnson | Ext 16703 | Liz.Johnson@shsc.nhs.uk |

Equality Impact Assessment Process and Record for Written Policies

Stage 1 – Relevance - Is the policy potentially relevant to equality i.e. **will this policy potentially impact on staff, patients or the public?** This should be considered as part of the Case of Need for new policies.

NO – No further action is required – please sign and date the following statement.
I confirm that this policy does not impact on staff, patients or the public.

I confirm that this policy does not impact on staff, patients or the public.

Name/Date: N/A

YES, Go to Stage 2
Yes

Stage 2 Policy Screening and Drafting Policy - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance and Flow Chart.

Stage 3 – Policy Revision - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

| SCREENING RECORD | Does any aspect of this policy or potentially discriminate against this group? | Can equality of opportunity for this group be improved through this policy or changes to this policy? | Can this policy be amended so that it works to enhance relations between people in this group and people not in this group? |
|-------------------------|--|---|---|
| Age | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Disability | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Gender Reassignment | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Pregnancy and Maternity | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Race | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |

| | | | |
|--------------------------------------|-----------|---|-----------|
| Religion or Belief | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Sex | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Sexual Orientation | No | The core purpose of this policy is to improve equality of opportunity for people in protected groups | No |
| Marriage or Civil Partnership | No | | |

Please delete as appropriate: - no changes made.

Impact Assessment Completed by: Liz Johnson Head of Equality and Inclusion
October 2020

Appendix B –Trust Policy Statement

Mental Health Act Code of Practice

Trust Statement on Equality and Human Rights

People who use our services have the following Rights

- To be treated with respect, dignity and compassion²
- Not be discriminated against on the grounds of protected characteristics: age, disability, gender

reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.³

- To have access to and information about independent advocacy services⁴
- Liberty, unless detained lawfully⁵
- Adequate healthcare for their physical and mental health needs⁶
- Access to health promotion and prevention information⁷
- Protection from inhuman or degrading conditions⁸
- Agree how much they want family and friends involved in their care and support⁹
- Support to make an advance statement about their care and treatment choices if they become ill¹⁰

Ensuring these Rights

Equality and Human Rights Legislation

- Sheffield Health and Social Care publish a report every year that says what we have done to prevent discrimination, advance equal opportunity and foster good relations. The report also covers Human Rights. The report is published on our web site and written copies in different formats can be provided by contacting SHSC

Monitoring Equality and Human Rights

- Alongside our annual report we publish information about the diversity of people who use our services.
- When we develop and update services we use equality impact analysis to see if the change might disadvantage any groups - this is also an opportunity to improve quality.
- We monitor incidents that appear to involve racial harassment or that potentially impact on a person's Human Rights.
- We monitor areas such as seclusion and restraint to see if different groups experience restraint and seclusion more frequently than others.

Environment and Culture

- Our Trust Values include Respect, Compassion Fairness and Partnership. These values are at the heart of our organisations culture.
- We aim to treat all people who use our services as individuals and this includes recognising the diversity of the people who use our services and making adjustments to ensure equal access to and a positive experience of services. The need for adjustments is identified through assessment and care planning.
- We will provide relevant mandatory equality and diversity training.

² SCHEDULE 1 Article 8, Human Rights Act 1998

³ The Equality Act 2010

⁴ The Mental Health Act 1983 as amended

⁵ SCHEDULE 1 Article 5, Human Rights Act 1998

⁶ The United Nations Convention on the Rights of Disabled People Article 25

⁷ The United Nations Convention on the Rights of Disabled People Article 25

⁸ SCHEDULE 1 Article 3, Human Rights Act 1998

⁹ SCHEDULE 1 Article 8, Human Rights Act 1998

¹⁰ The Mental Health Act 1983 as amended

Appendix C – Governance Flow Charts

Mental Health Act Code of Practice - Equality and Human Rights Policy - Governance Flow Chart – EQUALITY

| Policy Section | Achieved By | Governance | Lead |
|----------------------|---|---------------------------------------|--|
| Section 7 – Equality | → Equality Impact Analysis and Human Rights Review process | → Policy on Policies | → Policy Governance Lead |
| Section 7 - Equality | → Annual Report to the Mental Health Legislation Committee | → Mental Health Legislation Committee | → The Head of Equality and Inclusion and the Mental Health Legislation Manager |
| Section 7 - Equality | → Specific Section in the Trust Annual Equality and Human Rights Report | → Mental Health Legislation Committee | → The Head of Equality and Inclusion and the Mental Health Legislation Manager |
| Section 7 - Equality | → EMSA | → Quality Assurance Committee | → Inpatient Services Clinical Manager |

Mental Health Act Code of Practice - Equality and Human Rights Policy - Governance Flow Chart – HUMAN RIGHTS

| Policy Section | Achieved By | Governance | Lead |
|---------------------------------|--|-------------------------------------|-------------------------------------|
| Section 7 – Human Rights | Human Rights Compliance Review | Policy on Policies | Policy Governance Lead |
| Section 7 – Human Rights | Annual Report to the Mental Health Legislation Committee including relevant breaches of the MHA and MCA. | Mental Health Legislation Committee | Head of Mental Health Legislation |
| Section 7 – Human Rights | MHA audit | Mental Health Legislation Committee | Head of Mental Health Legislation |
| Section 7 – Human Rights | Review of restrictive interventions | Restrictive Interventions Group | Inpatient Services Clinical Manager |