

BOARD

SUMMARY REPORT

Meeting Date:
Agenda Item:

28 September 2022
27

Report Title:	Mental Health Act – Statutory Hospital Manager Functions Scheme of Delegation	
Author(s):	Jamie Middleton, Head of Mental Health Legislation	
Accountable Director:	Dr Mike Hunter, Executive Medical Director	
Other meetings this paper has been presented to or previously agreed at:	Committee/Tier 2 Group/Tier 3 Group	Mental Health Legislation Group
	Date:	January 2022
Key points/ recommendations from those meetings	It was recommended that Nursing Associates be given delegated authority in relation to the explanation of patient’s rights. This is supported by the Nursing Directorate	

Summary of key points in report

SHSC Hospital Managers (meaning ‘the Trust’ as a corporate organisation) have a range of legal duties placed on them by the Mental Health Act. On a day-to-day basis, however, such duties and obligations are discharged by SHSC staff. This is legally acceptable and appropriate for many tasks, but the Mental Health Act Code of Practice, which the Trust must legally have regard to, states that a Scheme of Delegation should be established which stipulates who is authorised to carry out delegated functions. The Code stipulates that such delegation should be “approved by a resolution of the body itself” ie. the Trust Board.

A copy of the current Scheme of Delegation can be found at Appendix A. This appears to have been produced several years ago and not formally reviewed since.

This paper recommends that the current Scheme of Delegation is refreshed and updated. This is not only part of good governance but to reflect a new role – that of Nursing Associates – having been introduced nationally. At present, Nursing Associates do not have any authority to carry out delegated functions. It is recommended that the Scheme of Delegation is amended to allow appropriately trained Nursing Associates to carry out a specific function in relation to explaining patient’s rights.

Additional sections have also been added to the Scheme of Delegation to show version control, review cycle and review history.

The proposed new Scheme of Delegation can be seen at Appendix B.

Recommendation for the Board/Committee to consider:

Consider for Action		Approval	✓	Assurance		Information	
----------------------------	--	-----------------	---	------------------	--	--------------------	--

It is recommended that the updated Scheme of Delegation, as per Appendix B, is accepted and approved.

Please identify which strategic priorities will be impacted by this report:				
Covid-19 Recovering Effectively	Yes		No	✓
CQC Getting Back to Good	Yes	✓	No	
Transformation – Changing things that will make a difference	Yes	✓	No	
Partnerships – working together to have a bigger impact	Yes		No	✓
Is this report relevant to compliance with any key standards ? State specific standard				
Care Quality Commission Fundamental Standards	Yes	✓	No	
Data Security and Protection Toolkit	Yes		No	✓
Any other specific standard?	Yes	✓	No	
Well led; responsive				
Mental Health Act Code of Practice				
Have these areas been considered ? YES/NO				
If Yes, what are the implications or the impact? If no, please explain why				
Service User and Carer Safety and Experience	Yes	✓	No	
Financial (revenue & capital)	Yes	✓	No	
Organisational Development /Workforce	Yes	✓	No	
Equality, Diversity & Inclusion	Yes	✓	No	
Legal	Yes	✓	No	
Sustainability	Yes		No	
Good governance in relation to delegation of authority under the MHA is a key component of quality and safety in patient care				
Gaps in MHA governance could leave SHSC exposed to claims				
The revised Scheme of Delegation acknowledges workforce developments including the Nursing Associate role				
Good governance in relation to delegated authority is essential in delivering equitable care to people from all backgrounds				
This is an essential requirement of compliance with the MHA				
Good governance of MHA will encourage best use of resources				

Section 1: Analysis and supporting detail

Background

- 1.1 The Mental Health Act 1983 (as amended) places a number of legal duties upon Hospital Managers (meaning ‘the Trust’ as a corporate body), but on a day-to-day basis these duties are carried out by staff of the hospital. To be clear about who within the organisation is approved to discharge what duty on behalf of Hospital Managers, the Mental Health Act Code of Practice states that a Scheme of Delegation should be established and “approved by a resolution of the body itself”.
- 1.2 The Trust does have a Scheme of Delegation in relation to Mental Health Act functions, but this appears to have been produced several years ago and not reviewed.
- 1.3 A copy of the current Mental Health Act Scheme of Delegation is attached as **Appendix A**.

Proposed amendment in relation to Nursing Associates

- 1.4 Since the current Scheme of Delegation was written, a new role – Nursing Associates – has been introduced nationally. SHSC, as with many other mental health trusts, have employed staff into these roles.
- 1.5 Section 132 MHA places a legal duty upon Hospital Managers to provide eligible patients with information about their detention and their rights eg. right to challenge their detention by means of a Mental Health Review Tribunal.
- 1.6 In January 2022, the Mental Health Legislation Operational Group discussed the new role and recommended that Nursing Associates should be authorised to give information to patients as per s132 MHA. For this to happen, the Trust’s current Scheme of Delegation would need to be amended and refreshed. Training would be developed to facilitate this expansion of role.

Proposed amendments in relation to version control and document review

- 1.7 At present, the Trust’s Mental Health Act Scheme of Delegation is not being routinely reviewed. The absence of regular review, especially given the legal importance of the document, is not conducive to good governance.
- 1.8 Amendments to the current Scheme of Delegation are therefore proposed to provide for version control and a cycle of review.

Section 2: Risks

- 2.1 A lack of governance around the Trust’s Mental Health Act Scheme of Delegation attracts risks associated with lack of oversight and monitoring.
- 2.2 Lessons learnt from any complaints, near misses or incidents risk not being reflected in the delegation arrangements.

- 2.3 Lack of governance risks being interpreted by regulators as evidence of 'not being well-led' and not being in touch with professional developments nationally.
- 2.4 The Mental Health Act Scheme of Delegation is an important document as it gives legal authority to certain staff groups to carry out certain legal tasks on behalf of the Trust. Notwithstanding the delegations, the Trust remains legally responsible for the carrying out of certain functions. This means the governance and review of the Scheme of Delegation needs to be subject to ongoing review and oversight.
- 2.5 Staff need to be aware of legal authorities they have, not what they think they have. Staff who carry out certain tasks but who have not been authorised via the Scheme of Delegation are at risk of being legally and professionally challenged about whether they have acted outside of their role and remit.
- 2.6 There is also a risk that if the 'wrong' staff group carries out certain tasks which requires Trust's authorisation, then the task is likely to be deemed, legally, as not having been carried out. This could place the SHSC at risk of being challenged about whether it has discharged its legal duties correctly.

Section 3: Assurance

- 3.1 Monitoring of SHSC's compliance with the statutory requirements of the Mental Health Act is undertaken via the Trust's Mental Health Legislation Operational Group (MHLOG). MHLOG, in turn, reports to the Trust's Mental Health Legislation Committee (MHLC).
- 3.2 In relation to mental health legislation, the Trust is moving towards a 'dashboard' style of reporting to assist in the identification of any issues or trends. Issues linked with the Mental Health Act Scheme of Delegation will be incorporated into this.

Engagement

- 3.3 Engagement has primarily been with the Nursing Directorate regarding the Nursing Associate role.

Section 4: Implications

Strategic Priorities and Board Assurance Framework

- 1. Covid – Recovering Effectively
 - 2. CQC – Getting back to Good
 - 3. Transformation - Changing things that will make a difference
 - 4. Partnerships – Working together to have a bigger impact
- 4.1 The Mental Health Act Scheme of Delegation is important in relation to staffing as it helps to ensure staff are aware of what legal authorities have been delegated to them. This means there is less ambiguity about whether a particular staff member, or staff group, is allowed to carry out a particular Mental Health Act task.
 - 4.2 The Scheme of Delegation helps provide guidance and a framework for managers so they can respond to any staff enquiries and so they do not ask staff to carry out tasks when there is no legal authority to do so.
 - 4.3 The proposed amendment to the current Scheme of Delegation demonstrates SHSC is being responsive to a change nationally ie. in relation to the new Nursing Associate role being introduced.
 - 4.4 Given that the proposed amendment includes introducing a review process which is currently absent, this contributes towards the CQC Getting Back to Good programme in relation to the Trust being well-led.

Equalities, diversity and inclusion

- 4.5 The proposed amendment and refresh to the Scheme of Delegation does not have an adverse impact upon individuals who have protected characteristics, as per equality legislation.
- 4.6 The Scheme of Delegation should provide a consistent approach to certain MHA tasks which, in turn, should minimise any unlawful deviation from acceptable practice.

Culture and People

- 4.7 The recommendation contained within this paper will ensure patient's legal rights are both safeguarded and protected. Whilst this is not only a legal requirement which is placed on the Trust, such compliance will also promote a better patient experience.
- 4.8 The recommendation similarly supports SHSC staff as it provides clarity in relation to roles and responsibilities.

Integration and system thinking

- 4.9 No external stakeholders have been identified. The Scheme of Delegation is Trust specific and has to be devised at individual agency level.

Financial

- 4.10 No financial implications have been identified. Whilst some training will be needed, this can be delivered internally.

Compliance - Legal/Regulatory

- 4.11 The MHA Scheme of Delegation is an important document as it enables the Trust to meet its statutory obligations under the Mental Health Act. It is important for practitioners to know what they are, and are not, allowed to do but also important that the Trust Board is sighted on their legal obligations and how these are delegated.
- 4.12 The review and update of the Scheme of Delegation on a regular basis will be evidence of a strengthening of governance and help to ensure regulatory compliance.

Section 5: List of Appendices

- Appendix A: Current MHA Scheme of Delegation
- Appendix B: Recommended updated MHA Scheme of Delegation

FUNCTIONS IMPOSED ON HOSPITAL MANAGERS BY THE MENTAL HEALTH ACT 1983 AND THE CODE OF PRACTICE

SCHEME OF DELEGATION

Hospital Managers¹ have the authority to detain patients under the Mental Health Act 1983. The Hospital Manager have responsibility for seeing that the requirements of the Act are followed and must ensure that patients are detained only as the Act allows, that patients are fully informed of their statutory rights and supported in exercising these rights. They must ensure that treatment and care complies fully with the provisions of the Act. This applies equally to those detained in hospital and those subject to community treatment orders.

Most of the functions of the Hospital Managers can be delegated to officers of the trust with the exception of the power to discharge patients from CTO or detention

This scheme of delegation identifies who the Hospital Managers delegate responsibility under the Mental Health Act

FUNCTIONS THAT CANNOT BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory reference ²	Code of Practice ³	Authorised Person(s)/Committee
Review of renewal of patients’ detention and extension of community treatment order	Section 20(3) Section 20A	Chapter 38	Non-executive Directors Associate Mental Health Act Managers
Exercise of hospital managers’ power to discharge unrestricted detained patients and	Section 23(2)(a)	Chapter 38	Non-executive Directors Associate Mental Health Act Managers

¹ For purpose of the Act the Trust itself is defined as the Hospital Manager

² Mental Health Act 1983 (as amended by the MHA 2007).

The Mental Health (Hospital, Guardianship and Consent to Treatment) (England) Regulations 2008 (S.I. 1184)

³ The Mental Health Act 1983 Code of Practice (published in 2008)(revised 2015)

APPENDIX A

those subject to a community treatment order			
--	--	--	--

FUNCTIONS THAT CAN BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Admission of patients under the MHA	MHA sections 6(2), 40(1), 40(3), 47(3), 45B(2) Regulation 3	Chapter 37. (paragraphs 37.12)	Registered Nurse – Mental Health or LD (Documents for admission will be served by delivering it to an officer acting on behalf of the hospital managers on the admitting ward/unit)
Hospital Managers duty to give information to detained patients, those subject to a community treatment order and nearest relatives	S132 & 132A	Chapter 4	Registered Nurse – Mental Health or LD Named Nurse/Care Coordinator Mental Health Act Administration
Receipt, Scrutiny and Rectification of documents	MHA 11(2) MHA section 15 Regulation 4(3)	Chapter 35 (paragraphs 35.4 – 35.9) Chapter 35 (paragraphs 35.11) Chapter 35 (paragraphs 35.12)	Receipt of Documents: Registered Nurse – Mental Health or LD Mental Health Act Administration Scrutiny & rectification of Documents:- Mental Health Act Administration Medical Scrutiny:- Consultant Psychiatrist Specialist Registrar with appropriate clinical expertise
Recording of Admission (Form H3) (for sections 2,3 & 4)	MHA Sections 2,3 and 4 Regulations 4(4) and 4(5)	Chapter 35	Registered Nurse – Mental Health or LD

APPENDIX A

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Recording admission (Section 5(2) – Form H1 section 5(4) – Form H2)	MHA Sections 5(2) and 5(4) Regulation 4(g)	Chapter 18	Mental Health Act Administration Registered Nurse – Mental Health or LD
Receipt of Renewal documentation on behalf of Hospital Managers (Form 5)	MHA Section 20(3)(b) Regulation 13(3)	Chapter 32	Mental Health Act Administration
Receipt of order for the discharge of a patient, or notice of intention to make such an order from detention or CTO by RC or nearest relative	Section 23 Regulation 18	Chapter 32	Mental Health Act Manager Mental Health Act Administration
Transfer of Authority for detained patients (form H4)	Section 19(1)(a) Regulation 7(2)(a), 7(3)	Chapter 37 (paragraph 37.36 – 37.29)	Decision to transfer made by RC Mental Health Act Administration
Receipt of Community Treatment order (Form CTO1)	Section 17A Regulation 6(1)(a),(b)and 6(2)(a)	Chapter 35 35.16 (paragraph 35.16)	Mental Health Act Administration
Receipt of order varying CTO conditions (Form CTO2)	Section 17B(4) Regulation 6(2)(b)	Chapter 29 (paragraphs 29.40-29.43)	Mental Health Act Administration
Receipt of extension report for CTO (Form CTO7)	Section 20A(4)(b) Regulations 13(6)(a) (b) and 13(7)	Chapter 32 (paragraphs 32.11-32.15)	Mental Health Act Administration
Receipt of notice recalling patient from CTO (Form CTO 3)	Section 17E(6) Regulation 6(3)(a)	Chapter 29 (paragraph 29.60)	Mental Health Act Administration
Record of detention in hospital after recall (Form CTO4)	Section 17E Regulations 6(3)(d)	Chapter 29 (paragraph 29.69)	Registered Nurse – Mental Health or LD
Receipt of CTO Revocation order (Form CTO 5)	Section 17F(4) Regulation 6(8)(a) (b)	Chapter 29 (paragraph 29.68 paragraph 29.71)	Mental Health Act Administration

APPENDIX A

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Transfer of recalled CTO Patient to a hospital under different managers (form CTO 6)	Section 17F(2) Regulation 9(3)(a), 9(5)	Chapter 37 (paragraph 37.30)	Decision to transfer made by RC Mental Health Act Administration
Transfer of responsibility for CTO patient to a hospital under different managers (form CTO10)	Section 19A Regulation 17	Chapter 37 (paragraph 37.31)	Decision to transfer made by RC Mental Health Act Administration
Duty to refer cases to First Tier Tribunal (Mental Health)	Section 68	Chapter 12 (paragraph 12.10) Chapter 19 (paragraph 19.110) Chapter 37 (paragraph 37.39 paragraph 37.42)	MHA Administration
Duty to request Secretary of State to refer a case to the First Tier Tribunal (Mental Health)	Section 67	Chapter 37 (paragraph 37.45 – 37.46)	Mental Health Act Administration
Transfer to guardianship (Form G6)	Section 19(1)(a) Regulation 7(4)	Chapter 30 (paragraph 30.36)	Mental Health Act Administration
Withholding patients' correspondence	Section 134	Chapter 37 (paragraph 37.37)	Ward Manager
Duties in respect of Victims of crime- Information for Victims	Domestic Violence, Crime and Victims Act	Chapter 40 (paragraph 40.18 – 40.20) Chapter 37 (paragraph 37.34)	Head of Mental Health Legislation Responsible Clinician Clinical Nurse Manager Ward Manager

APPENDIX B

FUNCTIONS IMPOSED ON HOSPITAL MANAGERS BY THE MENTAL HEALTH ACT 1983 (as amended) AND ITS ASSOCIATED CODE OF PRACTICE

PROPOSED SCHEME OF DELEGATION

Hospital Managers⁴ have the authority to detain patients under the Mental Health Act 1983 (as amended) (hereafter referred to as ‘the Act’). They also have responsibility for:

- seeing that the requirements of the Act are followed,
- ensuring that patients are detained only as the Act allows,
- ensuring that patients are fully informed of their statutory rights and supported in exercising these rights, and
- ensuring that treatment and care complies fully with the provisions of the Act.

These responsibilities apply equally to those detained in hospital and those subject to community treatment orders.

On a day-to-day basis, most decisions are made by individual staff/groups of individual staff on the Manager’s behalf. However, certain decisions will be made by panels of people who are specifically appointed to carry out a role eg. Associated Mental Health Act Managers considering appeals against detention and being subject to a Community Treatment Order (CTO).

Most of the functions of the Hospital Managers can be delegated to staff (sometimes referred to as ‘officers of the Trust’), except for the power to discharge patients from a CTO or eligible detention⁵.

The Mental Health Act Code of Practice requires Hospital Managers to set out a ‘Scheme of Delegation’ which outlines who is authorised to take which decisions (para 37.9). This Scheme of Delegation aims to meet this requirement.

⁴ For purpose of the Act, the Trust itself is defined as the Hospital Manager (s145(1))

⁵ Paras 38.3-38.4 MHA Code of Practice

APPENDIX B

FUNCTIONS THAT CANNOT BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory reference ⁶	Code of Practice ⁷	Authorised Person(s)/Committee
Review of renewal of patients' detention and extension of community treatment order	Section 20(3) Section 20A	Chapter 38	Non-executive Directors Associate Mental Health Act Managers
Exercise of hospital managers' power to discharge unrestricted detained patients and those subject to a community treatment order	Section 23(2)(a)	Chapter 38	Non-executive Directors Associate Mental Health Act Managers

FUNCTIONS THAT CAN BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Admission of patients under the MHA	MHA sections 6(2), 40(1), 40(3), 47(3), 45B(2) Regulation 3	Chapter 37. (paragraph 37.12)	Registered Nurse – Mental Health or LD ⁸ (Documents for admission will be served by delivering it to an officer acting on behalf of the hospital managers on the admitting ward/unit)
Hospital Managers duty to give information to detained patients, those subject to a community treatment order and nearest relatives	S132 & 132A	Chapter 4	Registered Nurse – Mental Health or LD ⁹ Named Nurse/Care Coordinator Nursing Associate Mental Health Act Administration

⁶ Mental Health Act 1983 (as amended by the MHA 2007).

The Mental Health (Hospital, Guardianship and Consent to Treatment) (England) Regulations 2008 (S.I. 1184)

⁷ The Mental Health Act 1983 (as amended) Code of Practice (2015)

⁸ A Registered Nurse is deemed to be a Registered Nurse in relation to Mental Health and/or Learning Disability if there is an entry on the nurse's professional register stating that the nurse's field of practice is either mental health nursing or learning disabilities nursing

⁹ See footnote 5

APPENDIX B

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Receipt, Scrutiny and Rectification of documents	MHA 11(2) MHA section 15 Regulation 4(3)	Chapter 35 (paragraph 35.4 – 35.9) Chapter 35 (paragraph 35.11) Chapter 35 (paragraph 35.12)	Receipt of Documents: Registered Nurse – Mental Health or LD ¹⁰ Mental Health Act Administration Scrutiny & rectification of Documents:- Mental Health Act Administration Medical Scrutiny:- Consultant Psychiatrist Specialist Registrar with appropriate clinical expertise
Recording of Admission (Form H3) (for sections 2,3 & 4)	MHA Sections 2,3 and 4 Regulations 4(4) and 4(5)	Chapter 35	Registered Nurse – Mental Health or LD ¹¹
Recording admission (Section 5(2) – Form H1 section 5(4) – Form H2)	MHA Sections 5(2) and 5(4) Regulation 4(g)	Chapter 18	Mental Health Act Administration Registered Nurse – Mental Health or LD ¹²
Receipt of Renewal documentation on behalf of Hospital Managers (Form 5)	MHA Section 20(3)(b) Regulation 13(3)	Chapter 32	Mental Health Act Administration
Receipt of order for the discharge of a patient, or notice of intention to make such an order from detention or CTO by RC or nearest relative	Section 23 Regulation 18	Chapter 32	Mental Health Act Manager Mental Health Act Administration

¹⁰ See footnote 5

¹¹ See footnote 5

¹² See footnote 5

APPENDIX B

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Transfer of Authority for detained patients (form H4)	Section 19(1)(a) Regulation 7(2)(a), 7(3)	Chapter 37 (paragraph 37.36 – 37.29)	Decision to transfer made by RC Mental Health Act Administration
Receipt of Community Treatment order (Form CTO1)	Section 17A Regulation 6(1)(a),(b)and 6(2)(a)	Chapter 35 35.16 (paragraph 35.16)	Mental Health Act Administration
Receipt of order varying CTO conditions (Form CTO2)	Section 17B(4) Regulation 6(2)(b)	Chapter 29 (paragraphs 29.40- 29.43)	Mental Health Act Administration
Receipt of extension report for CTO (Form CTO7)	Section 20A(4)(b) Regulations 13(6)(a) (b) and 13(7)	Chapter 32 (paragraphs 32.11- 32.15)	Mental Health Act Administration
Receipt of notice recalling patient from CTO (Form CTO 3)	Section 17E(6) Regulation 6(3)(a)	Chapter 29 (paragraph 29.60)	Mental Health Act Administration
Record of detention in hospital after recall (Form CTO4)	Section 17E Regulations 6(3)(d)	Chapter 29 (paragraph 29.69)	Registered Nurse – Mental Health or LD ¹³
Receipt of CTO Revocation order (Form CTO 5)	Section 17F(4) Regulation 6(8)(a) (b)	Chapter 29 (paragraph 29.68 paragraph 29.71)	Mental Health Act Administration
Transfer of recalled CTO Patient to a hospital under different managers (form CTO 6)	Section 17F(2) Regulation 9(3)(a), 9(5)	Chapter 37 (paragraph 37.30)	Decision to transfer made by RC Mental Health Act Administration
Transfer of responsibility for CTO patient to a hospital under different managers (form CTO10)	Section 19A Regulation 17	Chapter 37 (paragraph 37.31)	Decision to transfer made by RC Mental Health Act Administration

¹³ See footnote 5

APPENDIX B

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Duty to refer cases to First Tier Tribunal (Mental Health)	Section 68	Chapter 12 (paragraph 12.10) Chapter 19 (paragraph 19.110) Chapter 37 (paragraph 37.39 paragraph 37.42)	MHA Administration
Duty to request Secretary of State to refer a case to the First Tier Tribunal (Mental Health)	Section 67	Chapter 37 (paragraph 37.45 – 37.46)	Mental Health Act Administration
Transfer to guardianship (Form G6)	Section 19(1)(a) Regulation 7(4)	Chapter 30 (paragraph 30.36)	Mental Health Act Administration
Withholding patients' correspondence	Section 134	Chapter 37 (paragraph 37.37)	Ward Manager
Duties in respect of Victims of crime- Information for Victims	Domestic Violence, Crime and Victims Act	Chapter 40 (paragraph 40.18 – 40.20) Chapter 37 (paragraph 37.34)	Head of Mental Health Legislation Responsible Clinician Clinical Nurse Manager Ward Manager

APPENDIX B

VERSION CONTROL

Version No.	Type of change	Date	Description of change(s)
V4	Update, review and refresh of content and presentation	January 2022	<ul style="list-style-type: none"> • Nursing Associates added giving authorisation to give information to patients under s132 MHA • Definition of MH and LD nurse added for clarity • Requirement of the Trust to have a Scheme of Delegation set out with legal basis • Version control added • Review schedule added • Review history added • Grammatical and format/structure changes

REVIEW SCHEDULE

Reviewing group	Frequency
Mental Health Legislation Operational Group	Annual (or by exception)
Mental Health Legislation Committee	Annual (or by exception)
SHSC Trust Board	Every three years

REVIEW HISTORY

Date of Review	Reviewing group
January 2022	Mental Health Legislation Operational Group