

# Board of Directors – Public

## SUMMARY REPORT

Meeting Date:

27 September 23

Agenda Item:

23

<b>Report Title:</b>	<b>Annual Mental Health Act – Scheme of Delegation</b>	
<b>Author(s):</b>	Jamie Middleton, Head of Mental Health Legislation, Human Rights and Chaplaincy	
<b>Accountable Director:</b>	Dr Mike Hunter, Executive Medical Director	
<b>Other meetings this paper has been presented to or previously agreed at:</b>	<b>Committee/Tier 2 Group/Tier 3 Group</b>	Mental Health Legislation Committee (MHLC)
	<b>Date:</b>	21.6.23
<b>Key points/ recommendations from those meetings</b>	Committee reviewed the current Mental Health Act Scheme of Delegation and was satisfied that it remained fit for purpose and did not require any amendments (other than an administrative change).	

### Summary of key points in report

The Mental Health Act (MHA) Code of Practice states that: *“Hospital managers should set out the arrangements for who is authorised to take which decisions in a scheme of delegation. If the hospital managers are an organisation, that scheme of delegation should be approved by a resolution of the body itself.”*

The Trust has a MHA Scheme of Delegation in place which sets out who has been authorised by the Board to carry out certain statutory tasks. This Scheme requires annual review by the Mental Health Legislation Committee (MHLC), and a review by Trust Board every three years, to ensure it remains fit for purpose.

The Trust Board’s last review, and approval, of the arrangements took place in September 2023.

The MHLC’s annual review of the MHA Scheme of Delegation took place at the MHLC on 21 June 2023. It was MHLC’s view that the current arrangements continued to be appropriate, and no changes were needed to its core content. An administrative amendment was requested, however, which was to add an approval history section. This request has been actioned.

Document attached:

**Appendix 1 - SHSC Mental Health Act Scheme of Delegation (v5)**

### Recommendation for the Board/Committee to consider:

Consider for Action	Approval	Assurance	Information
		✓	✓
<ul style="list-style-type: none"> <li>Board is invited to receive assurance that the Trust continues to have a MHA Scheme of Delegation in place, thus meeting a requirement set out in the MHA Code of Practice.</li> <li>Board is asked to note that the MHA Scheme of Delegation received its annual review by the Mental</li> </ul>			

Health Legislation Committee in June 2023 and that, apart from an administrative change, no amendments were recommended.

<b>Please identify which strategic priorities will be impacted by this report:</b>				
Recover services and improve efficiency	Yes	✓	No	
Continuous quality improvement	Yes	✓	No	
Transformation – Changing things that will make a difference	Yes		No	✓
Partnerships – working together to make a bigger impact	Yes		No	✓
<b>Is this report relevant to compliance with any key standards ?</b>		<b>State specific standard</b>		
<b>Care Quality Commission Fundamental Standards</b>	Yes	✓	No	Consent; dignity/respect; complaints; good governance
<b>Data Security and Protection Toolkit</b>	Yes		No	✓
<b>Any other specific standard?</b>	Yes	✓	No	Mental Health Act Code of Practice
<b>Have these areas been considered? YES/NO</b>		<b>If yes, what are the implications or the impact? If no, please explain why</b>		
Service User and Carer Safety, Engagement and Experience	Yes	✓	No	The Mental Health Act Scheme of Delegation (MHA-SoD) is intended to ensure patient's rights are protected by being clear about what statutory powers are given to which staff groups. Only staff groups which are appropriately trained and, where necessary, professionally registered to the task are given delegated responsibilities.
Financial (revenue & capital)	Yes	✓	No	No financial implications have been identified.
Organisational Development /Workforce	Yes	✓	No	The MHA-SoD is intended to be clear about which staff within the Trust have what authority. The MHA-SoD should therefore help to support staff to understand their responsibilities.
Equality, Diversity & Inclusion	Yes	✓	No	The MHA-SoD should ensure all patients are treated with equity.
Legal	Yes	✓	No	The MHA-SoD is intended to ensure compliance with the MHA Code of Practice.
Environmental sustainability	Yes	✓	No	No environmental implications identified.

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

### SCHEME OF DELEGATION

Hospital Managers<sup>1</sup> 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 detention<sup>2</sup>.

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.

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<sup>1</sup> For purpose of the Act, the Trust itself is defined as the Hospital Manager (s145(1))

<sup>2</sup> Paras 38.3-38.4 MHA Code of Practice

## FUNCTIONS THAT CANNOT BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory reference <sup>3</sup>	Code of Practice <sup>4</sup>	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 <sup>5</sup> (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 <sup>6</sup> Named Nurse/Care Coordinator Nursing Associate Mental Health Act Administration

<sup>3</sup> 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)

<sup>4</sup> The Mental Health Act 1983 (as amended) Code of Practice (2015)

<sup>5</sup> 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

<sup>6</sup> See footnote 5

<b>Function</b>	<b>Statutory Reference</b>	<b>Code of Practice</b>	<b>Authorised Person(s)/Committee</b>
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 <sup>7</sup> 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 <sup>8</sup>
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 <sup>9</sup>
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

<sup>7</sup> See footnote 5

<sup>8</sup> See footnote 5

<sup>9</sup> See footnote 5

<b>Function</b>	<b>Statutory Reference</b>	<b>Code of Practice</b>	<b>Authorised Person(s)/Committee</b>
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 <sup>10</sup>
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

<sup>10</sup> See footnote 5

<b>Function</b>	<b>Statutory Reference</b>	<b>Code of Practice</b>	<b>Authorised Person(s)/Committee</b>
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

## 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"> <li>• Nursing Associates added giving authorisation to give information to patients under s132 MHA</li> <li>• Definition of MH and LD nurse added for clarity</li> <li>• Requirement of the Trust to have a Scheme of Delegation set out with legal basis</li> <li>• Version control added</li> <li>• Review schedule added</li> <li>• Review history added</li> <li>• Grammatical and format/structure changes</li> </ul>
V5	Annual review of content	September 2023	<ul style="list-style-type: none"> <li>• Board approval history section added</li> </ul>

## 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
June 2023	Mental Health Legislation Operational Group via e-governance (no changes proposed)
June 2023	Mental Health Legislation Committee

## BOARD APPROVAL HISTORY

Date of Approval	Version	Approved by
September 2022	V4	SHSC Trust Board