

Board of Directors - Public

SUMMARY REPORT

Meeting Date:

25 September 2024

Agenda Item:

22

Report Title:	Mental Health Act – Scheme of Delegation	
Author(s):	Jamie Middleton, Head of Mental Health Legislation, Human Rights & Chaplaincy	
Accountable Director:	Dr Helen Crimlisk, Interim Medical Director	
Other meetings this paper has been presented to or previously agreed at:	Committee/Tier 2 Group/Tier 3 Group	Mental Health Legislation Operational Group (MHLOG) Mental Health Legislation Committee (MHLC)
	Date:	19.8.24- MHLOG 4.9.24- MHLC
Key points/ recommendations from those meetings	MHLOG was keen to emphasise that the proposed expansion of which roles are authorised to provide information to patients under s132/132A does not compel or mandate those roles from doing so.	

Summary of key points in report

The Mental Health Act 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 Mental Health Act 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 to ensure it remains fit for purpose and it is recommended to Board for approval of the annual review and the recommended changes.

Various changes to the Scheme of Delegation are proposed, the majority of which are to add points of clarity. Proposed changes are highlighted in yellow.

Particular attention is drawn to who is authorised by the Trust to provide information to patients under s132/132A Mental Health Act. At the time of writing, there are concerns about how the Trust is fulfilling its legal duties under s132/132A and these concerns are on the Trust’s Corporate Risk Register.

Currently, only limited professional groups are authorised by the Board to provide information as per s132/132A. This means that if another professional has provided information and helped the patient to understand it, it would still have to be repeated as it had not been provided by an authorised person.

The addition of various roles authorised to provide information under s132/132A is so that if a currently non-authorised professional provides such information and helps the patient, then this will be duly authorised and contributes to fulfilling the Trust’s legal duties.

It is important to emphasise that expansion of those authorised does not in any way mandate or direct those listed to provide information under s132/132A. Work is currently underway in a specific Task and Finish Group to improve compliance with s132/132A where a new policy will be ultimately produced to clarify who

is 'responsible' and who is 'authorised'.

Appendices attached:

Appendix 1 – Proposed amended Mental Health Act Scheme of Delegation

Recommendation for the Board/Committee to consider:

Consider for Action		Approval	✓	Assurance		Information	
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The Board is asked to approve the proposed amended MHA Scheme of Delegation. Once approved this will be incorporated into the Full SFI's, standing orders and scheme of delegation (approved at Board previously) and available on the intranet and website.

Please identify which strategic priorities will be impacted by this report:

Effective Use of Resources	Yes	✓	No	
Deliver Outstanding Care	Yes	✓	No	
Great Place to Work	Yes	✓	No	
Ensuring our services are inclusive	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		Mental Health Act 1983 (as amended); 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, Engagement and Experience	Yes	✓	No		Proposed amendments are intended to be patients' rights promoting
Financial (revenue & capital)	Yes	✓	No		No financial implications identified
Organisational Development /Workforce	Yes	✓	No		Specific training in respect of s132/132A is currently being designed
Equality, Diversity & Inclusion	Yes	✓	No		The proposed amendments are intended to be rights promoting and ensuring all rights are protected, regardless of difference
Legal	Yes	✓	No		Mental Health Act 1983 (as amended) and its Code of Practice have been incorporated into the Scheme of Delegation.
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 Managers¹ 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 detention².

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.

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

² Paras 38.3-38.4 MHA Code of Practice

FUNCTIONS THAT CANNOT BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory reference ³	Code of Practice ⁴	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 and to receive applications for detention (the 'receiving officer')	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 ⁵ (Documents for admission will be deemed to have been served by delivering them to an officer acting on behalf of the hospital managers on the admitting ward/unit – ie. Registered Nurse – Mental Health or LD ⁵)
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; Named Nurse; Named Workers; Responsible Clinicians; Registered Medical Practitioners; Psychologists; Psychology Assistants; Allied Health Professionals; Social Workers; Nursing Associate; Support workers; Physician Associates; Pharmacists; Mental Health Act Administration

³ 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)

⁴ The Mental Health Act 1983 (as amended) Code of Practice (2015)

⁵ 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

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 and initial checking of Documents to ensure an application has been duly completed: Registered Nurse – Mental Health or LD ⁶ Mental Health Act Administration Administrative Scrutiny & rectification of Documents:- Mental Health Act Administration Medical Scrutiny:- A senior clinician, with appropriate clinical expertise, and approved by the Mental Health Legislation Operational Group (MHLOG)
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 ⁷
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 ⁸ Registered Medical Practitioner or an approved clinician qualified to do so under s5(2)
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

⁶ See footnote 5

⁷ See footnote 5

⁸ See footnote 5

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
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Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Transfer of Authority for detained patients (form H4) (to complete the H4 for transfer out and to receive a H4 for transfer in)	Section 19(1)(a) Regulation 7(2)(a), 7(3)	Chapter 37 (paragraph 37.36 – 37.29)	Decision to transfer detained patient must be made by RC. Form H4 can be completed/received by Responsible Clinician, a Registered Nurse – Mental Health or LD, and 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 ⁹
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

⁹ See footnote 5

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
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 In ward manager's absence, the Registered Nurse who is in charge of the ward at the time
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"> • 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
V5	Routine review	July 2024	<ul style="list-style-type: none"> • Clarification in respect of receiving MHA documents • Clarification in respect of when MHA documents will be deemed to have been served upon the Trust • Staff groups who are authorised to provide information under s132/132A has been widened significantly • Clarification in respect of the receipt and initial checking of MHA documents • Clarification in respect of the administrative scrutiny carried out by the Mental Health Act office • Added that the decision of where clinical scrutineers are agreed is Mental Health Legislation Operational Group (MHLOG) • Added Registered Nurse as being authorised to complete H3, subject to RC consenting to patient transfer • Added Responsible Clinician to being authorised to

			<ul style="list-style-type: none"> complete H3 Added that Registered Nurse and Responsible Clinician can also receive H4 on behalf of the Trust Added role of Registered Medical Practitioner or AC in respect of completing Form H1 (s5(2)) Added nurse in charge to who can withhold correspondence under s134 should ward manager not be on shift
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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)
Aug 2024	Mental Health Legislation Operational Group