

The Mental Health Act 1983 (As amended by the 2007 Act) CLP020

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Why we need this Policy

This over-arching Mental Health Act policy sets out the following:

- To whom it applies and where and when it should be applied (Introduction)
- Why the policy is necessary (Purpose)
- The duties of key members of staff (Duties)
- The underlying beliefs upon which the policy is based (Development of the Policy)
- The standards to be achieved (Development of the Policy)
- How the policy standards will be met through working practices (Dissemination/Monitoring Compliance)

A policy is a set of statements that document the course of action that the organisation will adopt in order to achieve a stated aim or strategic direction. This policy supports the Mental Health Act 1983 (“the Act”) (as amended by the 2007 Act), Code of Practice 2015 and Reference Guide 2015 to the Act. In addition this policy should be read in conjunction with the Mental Capacity Act Policy (CLP 023) and the above mentioned appendices.

This policy applies to all Northamptonshire Healthcare NHS Foundation Trust (NHFT) staff working with individuals suffering from mental disorder and who have defined responsibilities under the provisions of the Act. It provides an overarching position statement and directions to guidance in the implementation of the Act in practice.

This policy also deals with issues around implementation, distribution, retention, review, monitoring and audit of the use of the Act.

Staff should also have consideration for the Human Rights Act 1998, Mental Capacity Act 2005, Data Protection Act 1998 and the Children Act 1989 & 2004, The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, Domestic Violence and Crime and Victims Act 2004 and all other appropriate legislation.

What the Policy is trying to do

The Act provides the legal framework and safeguards for providing care and treatment to individuals suffering from mental disorder. This overarching policy was developed to replace all previous MHA policies (with the exceptions of sections 17, 17A, 18 and 136 of the Act.) with the MHA Code of Practice and the Reference Guide. A copy of the code of practice has been made available to all teams/ward settings.

The Department of Health has produced a policy document (Code of Practice/Reference Guide) which is easy to follow and understand which allows the Trust the opportunity to rely on this as guidance rather than having separate policies. The Code stipulates in certain chapters that local guidance should be made available and therefore sections 17, 17A, 18 and 136 policies still apply.

All staff working with individuals who suffer from mental disorder must ensure that their actions fall within the framework of the Act, all actions taken must be in accordance with the Guiding Principles laid out in Chapter 1 of the Code of Practice.

The Trust is required to deliver services to its service users, supported by their carers where appropriate within the legal framework of the Act and in accordance to the Mental Health Act Code of Practice.

The purpose of this policy is to provide staff with guidance to ensure compliance with the provisions of the Mental Health Act, to assist staff in undertaking their duties, protecting them and the Trust from litigation.

There is an expectation that health professionals will be able to move between services, locally and nationally and apply the same principles in the execution of their duties under the Act.

Which stakeholders have been involved in the creation of this Policy

- Directorate Leads, Clinical Staff, Clinical Policies Committee
- Trust Policy Board

Any required definitions/explanations

- **NHFT**
Northamptonshire Healthcare NHS Foundation Trust
- **MHA**
Mental Health Act 1983
- **DOH**
Department of Health
- **CQC**
Care Quality Commission
- **SOAD**
Second Opinion Appointed Doctors
- **IMHA**
Independent Mental Health Advocate

Key duties

If any member of staff is unclear how to proceed in a given situation and their query has not been answered by the Act, the Mental Health Act Code of Practice or the procedures associated with this policy then they must contact the Mental Health Act Administration Team or a senior member of Trust staff.

- **Duties within the Trust:**
 - **Chief Executive**
Is responsible for ensuring the principles of this policy and procedures and other associated policies are implemented across the organisation.
 - **Chief Operating Officer**
Is responsible for ensuring the implementation of this policy across clinical areas.
 - **Inpatient Members of Staff (including Responsible Clinician and Multidisciplinary Team)**
Are responsible for ensuring that they comply with the Mental Health Act 1983 policy.
 - **Head of Communications**
Where media publicity is required the Northamptonshire Healthcare NHS Foundation Trust Head of Communications will co-ordinate this.
 - **Head of Risk and Patient Safety**
Is responsible for notifying Commissioners of all incidents relating to the MHA which are classified as Serious Incidents.
 - **The Head of Service Development for Mental Health**
Is responsible for ensuring that 'Learning Lessons' forums are facilitated and include any lessons learned relating to MHA.
 - **Mental Health Act / Mental Capacity Act Manager**
 - Manage the day to day functioning of the Act on behalf of the MHA Hospital Managers.
 - Monitor the application of the Act and Code of Practice across the organisation.
 - Organise the implementation and required training.
 - **Mental Health Act Administration Team**
 - Scrutinise legal paperwork on behalf of the Hospital Managers and ensure rectification of amendable errors.
 - Coordinate First-Tier Tribunals in accordance with timescales set out in the Act and/or subsequent DOH directives.

- Coordinate Hospital Managers Hearings
 - Capture and present MHA data
 - Audit compliance with legislation
 - Attend regular update training
 - Inform Care Quality Commission of patient deaths and admission of under 18s
- **Hospital Managers (Mental Health Act Managers)**
 - Responsible for proper implementation of the Act
 - Delegate specific duties to the Mental Health Act Administration Team.
 - Attend regular update training
 - Attend regular Hospital Managers Forums
 - Hold appeal hearings when a patient appeals against their detention within timescales set out within the Act.
 - Hold review panels when a patient's detention is renewed or Nearest Relative barring order is issued
- **Service Managers**
 - Ensure all qualified staff receive training in relation to MHA.
 - Ensure all staff know how to access a copy of the Code of Practice and that they understand their responsibilities under the Act.
 - Ensure staff are aware of and adhere to this policy
 - Monitor staff compliance with the Act in line with their supervision through MHA competency checks.
- **All Clinical Staff**
 - Adhere to this policy when assessing or providing care or treatment (directly or indirectly) to individuals suffering from mental disorder.
 - Attend mandatory training as required
 - Ensure all paperwork required is completed within the timescales set out by the Trust to meet its obligations under the Act.
- **Approved Clinicians (AC)**
 - Personally accountable for discharging duties under the Act
 - Attend regular update training
 - Abide by professional code of practice
- **Responsible Clinicians (RC)**
 - Personally accountable for discharging duties under the MHA with respect to the service users for whom they are responsible.
 - Attend regular update training
 - Abide by professional code of practice
 - Ensure all staff are aware who the nominated deputy is and how to contact them for times when they are unavailable.
 - Ensure that on the change of RC for a given service user all interested parties are advised of that change.

- **Duties of agencies outside the Trust:**
 - **Approved Mental Health Professional (AMHP)**
 - Personally accountable for discharging duties under the Act.
 - Attend regular update training
 - Abide by code of professional practice
 - **Care Quality Commission**
 - Provide Second Opinion Appointed Doctors (SOADs)
 - Keep under review the exercise of powers and duties contained in the MHA 1983
 - Visit and interview detained patients in hospital, checking legality of paperwork.
 - Investigate complaints
 - Provide Biennial Reports
 - **First-Tier Tribunal Service**
 - Arrange for appeals in accordance with timescales laid out in the The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

Policy detail

- **Development of the Policy**

The policy is based on the contents of the Act, the Code of Practice, DOH Circulars and established best practice.

The MHA/MCA Scrutiny Committee identified the key issues that need to be addressed in this policy. The issues are based on meeting the needs of and answering key questions raised by various work streams including:

- MHA Administration
- Legal framework
- Workforce and organisational impact
- Communication
- Data Quality and System
- Training

The policy encompasses procedural guidelines (as appendices) which must be adhered to. These are based on the Act, the Code of Practice, the MHA Regulations, DOH Circulars and established best practice.

- **Statutory and Local Forms**

All statutory forms and local forms which were previously attached as appendices to MHA policies are held in the pink MHA folder which is available on every in-patient ward. It is the responsibility of the ward manager to ensure approved paperwork is stocked to meet the needs of the ward. The MHA Administration Team have a supply of original paperwork for distribution as necessary.

Photocopies and faxes can be accepted but the form must read **exactly the same** as on an original otherwise it will render the application invalid.

- **Transfer of detentions to and from other providers**

The MHA Administration Team must have scrutinised the section papers to check for any illegalities prior to accepting a detained patient for transfer in to NHFT or leave to NHFT. The MHA Administration Team must be informed as soon as the decision is made to transfer a detained patient out of NHFT so that the appropriate form and original section paperwork can be made available for transfer. In extreme circumstances only it may be necessary for a patient to be transferred between 5pm and 9am, please refer to ward guidance for obtaining section papers out of hours.

- **Consultation, Approval and Ratification**

This policy has been approved by the MHA/MCA Scrutiny Committee and ratified by the Trust Policy Board.

An Equality Impact Assessment has been conducted on this policy. The outcome was that as the policy is based on legislation that has already undergone a thorough Equality Impact Assessment at national/government level, it is already compliant.

- **Review and Revision Arrangements including Version Control**

The implementation of this policy will be monitored by the MHA/MCA Scrutiny Committee

This policy will be reviewed in two years time by the policy lead and resubmitted for approval and ratification.

- **Dissemination and Implementation**

The policy will be available on the Trust's intranet (the Staff Room) and the internet under Clinical Policies.

The MHA Manager will discuss the policy with all inpatient and community managers to ensure they are aware of the policy and to discuss training requirements. Individual training needs will be identified through Personal Development Plans.

The MHA Manager will ensure MHA training is available and provide specific training as requested together with regular training sessions. It is the individual clinician's responsibility

to ensure that they have sufficient knowledge and understanding to perform their functions under the Act in accordance with the MHA Code of Practice.

- **Document Control Including Archiving Arrangements**

Once this policy is superseded a copy will be retained by the Trust Policy Lead for 10 years in line with the recommendations contained within 'Records Management: NHS Code of Practice' (2006).

Training requirements associated with this Policy

- **Mandatory Training**

MHA training has been identified as a role specific requirement for all clinical staff working within mental health in-patient settings. Certain sections of the MHA and Code of Practice have been identified as an appropriate requirement for community mental health staff.

- **Specific Training not covered by Mandatory Training**

Specific MHA training will be provided by senior MHA Administration staff to doctors and qualified nursing staff as required.

How this Policy will be monitored for compliance and effectiveness

The table below outlines the Trust's monitoring arrangements for this 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	Method of monitoring	Individual responsible for the monitoring	Monitoring frequency	Group or committee who receive the findings or report	Group or committee or individual responsible for completing any actions
Duties	To be addressed by the monitoring activities below.				
Application of Procedures	Exception Reports / Monitoring of SUIs	Chief Operating Officer	Quarterly	Monitor and Board of Directors	As required
CQC Annual Action Plan	Ward actions resulting from announced and unannounced visits	MHA/MCA Manager	Bi-monthly	MHA/MCA scrutiny committee & governance committee	As required
Compliance with	MHA Audit	MHA/MCA	Bi-monthly	MHA/MCA	As required

MHA and Code of Practice		Manager		scrutiny committee & governance committee	
Legality of documentation	MHA audit	MHA/MCA Manager	Bi-monthly	MHA/MCA scrutiny committee & governance committee	As required
Response to Hospital Managers comments	Determined by comments of Hospital Managers	MHA/MCA Manager	As required	MHA/MCA scrutiny committee & governance committee	As required
Response to First-Tier Tribunal comments	Determined by Tribunal reports	MHA/MCA Manager	As required	MHA/MCA scrutiny committee & governance committee	As required
Where a lack of compliance is found, the identified group, committee or individual will identify required actions, allocate responsible leads, target completion dates and ensure an assurance report is represented showing how any gaps have been addressed.					

The Mental Health Act / Mental Capacity Act Scrutiny Committee meet on a quarterly basis.

For further information

Please contact the Mental Health Act / Mental Capacity Act Manager

Equality considerations

The Trust has a duty under the Equality Act and the Public Sector Equality Duty to assess the impact of Policy changes for different groups within the community. In particular, the Trust is required to assess the impact (both positive and negative) for a number of 'protected characteristics' including:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Race;

- Religion or belief;
- Sexual orientation;
- Pregnancy and maternity; and
- Other excluded groups and/or those with multiple and social deprivation (for example carers, transient communities, ex-offenders, asylum seekers, sex-workers and homeless people).

NHFT follow the guidance of the MHA 1983 additionally we follow the Code of Practice and Care Quality Commission guidance and place people in age appropriate services. If there is a need to detain children on adult acute wards, these exceptions are reported to the Director of Speciality Services and the Care Quality Commission.

NHFT ensures that when a patient is detained, circumstances take into account physical access issues, and wherever possible all considerations and possible changes will be put in place. Due regard will be given to alternatives.

NHFT provide services in the form of mixed and single gender accommodation. Admission wards, older adults, ICU, community hospitals and children wards are mixed gender and are managed using single gender corridors & segregated areas to ensure single gender facilities are available within that environment. Treatment wards, rehab wards and forensic wards are single gender environments. NHFT ensure to provide a safe environment for all patients on mixed gender wards.

Transsexual patients are placed to meet their needs.

NHFT do not stereotype and treat all patients with respect and dignity regardless. Staff are required to help and support patients and ensure that abuse of individuals does not take place. Staff will challenge all inappropriate behaviour and tackle any issues of unfair treatment relating to sexual orientation

NHFT do not stereotype and treat all patients with respect and dignity regardless. Staff are required to help and support patients and ensure that abuse of individuals does not take place. Staff will challenge all inappropriate behaviour and tackle any issues of unfair treatment relating to the persons race or ethnic background.

Interpreters are provided for all detained patients to ensure effective communication.

NHFT do not stereotype and treat all patients with respect and dignity regardless.

Staff are required to help and support patients and ensure their personal religious beliefs are respected.

Reference Guide

Mental Health Act 1983 – Department of Health

Mental Health Act 1983 Code of Practice – Department of Health

Reference Guide to the Mental Health Act 1983 – Department of Health

Mental Health Act Manual Nineteenth Edition – Richard Jones

Human Rights Act 1998 – Department of Health

Mental Capacity Act 2005 – Department of Health

Mental Capacity Act 2005 Code of Practice – Department of Health

Document control details

Author:	MHA/MCA Manager
Approved by and date:	Trust Policy Board 10.01.2017
Responsible Committee:	Clinical Exec.
Any other linked Policies:	Section 17 MHA Policy Section 17A MHA 1983 Policy Section 18 MHA Policy Section 136 MHA 1983 Policy Mental Capacity Act 2005 Policy
Policy number:	CLP020
Version control:	Version 1: December 2016

Version No.	Date Ratified/ Amended	Date of Implementation	Next Review Date	Reason for Change (eg. full rewrite, amendment to reflect new legislation, updated flowchart, minor amendments, etc.)
1.0	10.01.2017	10.01.2017	10.01.2020	New governance of trust policies template.
1.1	27.2.18			Reference year for code of practice updated from 2008 to 2015

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