



## MENTAL HEALTH ACT

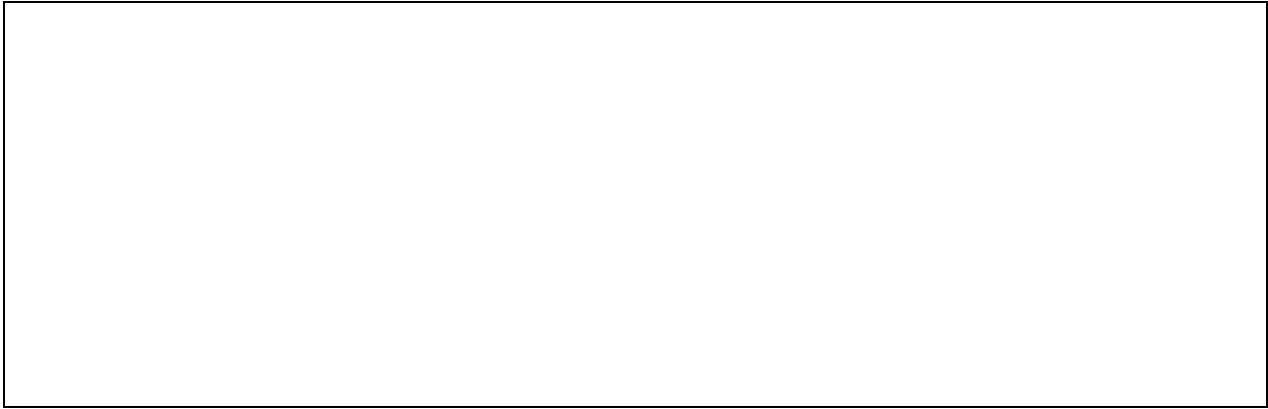
<b>Policy number and category</b>	MHL 01	Mental Health Legislation
<b>Version number and date</b>	5	October 2020
<b>Ratifying committee or executive director</b>	Mental Health Legislation Committee	
<b>Date ratified</b>	October 2020	
<b>Next anticipated review</b>	October 2023	
<b>Executive director</b>	Medical Director	
<b>Policy lead</b>	Head of Mental Health Legislation	
<b>Policy author (if different from above)</b>	Head of Mental Health Legislation	
<b>Exec Sign off Signature (electronic)</b>		
<b>Disclosable under Freedom of Information Act 2000</b>	Yes	

### POLICY CONTEXT

The Mental Health Act 1983 (MHA) is the legal foundation for dealing with people who require assessment, detention or treatment for mental disorder against their wishes. This policy defines the way that BSMHFT staff will respond to the Act. It provides procedures around the function and responsibilities of Lay Managers and particular parts of the MHA

### POLICY REQUIREMENT

- BSMHFT staff's responsibilities under the Act
- The application of the Principles of the Mental Health Act to Trust activities
- How Community Treatment Orders should be delivered
- The responsibilities & function of Lay Managers
- The requirements around providing patients their rights under section 132 and s132a



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## **1 INTRODUCTION**

### **1.1 Rationale (Why)**

This policy and procedure is required to ensure that service users who require detention or compulsion are dealt with consistently with The Mental Health Act 1983 (as amended 2007). To do this, it is necessary that BSMHFT staff operate within the confines of the Act and its Code of Practice

### **1.2 Scope (Where, When, Who)**

This policy applies to all circumstances and staff where the Mental Health Act is used or considered. This policy does not apply to the prison.

### **1.3 Principles (Beliefs)**

*The Trust positively supports individuals with learning disabilities and ensures that no-one is prevented from accessing the full range of mental health services available. Staff will work collaboratively with colleagues from learning disabilities services and other organisations, in order to ensure that service users and carers have a positive episode of care whilst in our services. Information is shared appropriately in order to support this.'*

The underlying principles of this policy are the 5 principles of the Mental Health Act 1983 as amended:

#### **1. Least restrictive option and maximising independence**

Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.

#### **2. Empowerment and involvement**

Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.

#### **3. Respect and dignity**

Patients, their families and carers should be treated with respect and dignity and listened to by professionals.

#### **4. Purpose and effectiveness**

Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

#### **5. Efficiency & equity**

Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

Staff will work collaboratively with colleagues from learning disabilities services and other organisations, in order to ensure that service users and carers have a positive episode of care whilst in our services. Information is shared appropriately in order to support this.'

## 2. POLICY (What)

- 2.1 All BSMHFT staff will follow both the word and the spirit of the Mental Health Act 1983 and its Code of Practice and follow the detailed guidance contained in the attached procedure documents.
- 2.2 All staff will follow the requirement to consider the 5 principles when taking decisions under the Mental Health Act

## 3. PROCEDURE

- 3.1 The Mental Health Act 1983 is a complex piece of legislation and in order to help staff adhere to its requirements, BSMHFT have produced procedure documents
- 3.2 BSMHFT staff, both directly employed and seconded are required to follow the processes as laid out within MHA Procedure Book 1 Community Treatment Orders; MHA Procedure Book 2 Lay Manager Procedures; MHA Procedure Book 3 s132 and s132a Patient Rights Procedures. In addition, a range of other policies have been amended to reflect the changes in the Code of Practice 2015 and these should be followed by all staff.

## 4. RESPONSIBILITIES

Post(s)	Responsibilities	Ref
All Staff	Be aware of and adhere to the policy	
Service, Clinical and Corporate Directors	Ensure the policy and its responsibilities are cascaded to all relevant staff	
Policy Lead	Keep the policy up to date in line with any legislative changes or amendments Communicate this to all relevant Leads across the Trust	
Executive Director	Accountable for ensuring the policy is up to date and complied with	
Lay Managers	Accountable for discharging their delegated powers of discharge under the MHA on behalf of the NEDs	

## 5. DEVELOPMENT AND CONSULTATION PROCESS

Consultation summary		
Date policy issued for consultation	14/08/2020	
Number of versions produced for consultation	2	
Committees or meetings where this policy was formally discussed		
MH Legislation Committee	10/2020	
MHLA Business Meeting	09/2020	
PDMG	09/2020	
Lay Manager Committee – email consultation		
Where else presented	Summary of feedback	Actions / Response

## 6. REFERENCE DOCUMENTS

The Mental Health Act 1983

The Mental Health Act (1983) Code of Practice

## 7. BIBLIOGRAPHY

The Mental Health Act 1983

The Mental Health Act (1983) Code of Practice

The Maze: A practical guide to the Mental Health Act

Pocket book guide to MHA Assessments (Barcham, Claire, 2016).

## 8. GLOSSARY

Aftercare	Aftercare services mean services which have the purposes of meeting a need arising from or related to the patient's mental disorder and reducing the risk of a deterioration of the patient's mental disorder
Application for detention	An application made by an Approved Mental Health Professional, or a nearest relative, under Part 2 of the Act for a patient to be detained in a hospital either for assessment or for medical treatment. Applications may be made under section 2 (application for admission for assessment), section 3 (application for admission for medical treatment) or section 4 (emergency application for admission for assessment).
Appropriate medical treatment	Medical treatment for mental disorder which is appropriate taking into account the nature and degree of the person's mental disorder and all the other circumstances of their case
Approved Mental Health Professional (AMHP)	Social worker or other professional approved by a local authority to carry out a variety of functions under the Act
Assessment	Examining a patient to establish whether the patient has a mental disorder and, if they do, what treatment and care they need. It is also used to mean examining or interviewing a patient to decide whether an application for detention or a guardianship application should be made.
Barring Order (M2)	When an RC blocks an order for discharge from detention from the patient's Nearest Relative
Bed Manager	A person a provider has appointed to have responsibility for finding a suitable bed in that organisation
Care programme approach (CPA)	A system of care and support for individuals with complex needs which includes an assessment, a care plan and a care coordinator. It is used mainly for adults in England who receive specialist mental healthcare and in some CAMHS services. There are similar systems for supporting other groups of individuals including, children and young people (children's assessment framework), older adults (single assessment process) and people with learning disabilities (person centred planning)
CCG	Clinical Commissioning Group – the NHS body responsible for commissioning.
Community Treatment Order (CTO)	The legal authority for the discharge of a patient from detention in hospital, subject to the possible recall to hospital for further medical treatment if necessary.
Criteria for detention	A set of criteria that must be met before a person can be

	detained, or remain detained, under the Act. The criteria are different in different sections of the Act
Detention for assessment (and detained for assessment)	The detention of a person in order to carry out an assessment. Can normally only last for a maximum of 28 days. Also known as 'section 2 detention'.
Detention for medical treatment (and detained for medical treatment)	The detention of a person in order to give them the medical treatment for mental disorder they need. There are various types of detention for medical treatment in the Act. It most often means detention as a result of an application for detention under section 3 of the Act. But it also includes several types of detention under part 3 of the Act, including hospital directions, hospital orders and interim hospital orders
DoLS	Deprivation of Liberty Safeguards - The framework of safeguards under the Mental Capacity Act 2005, as amended by the Mental Health Act 2007, for people who need to be deprived of their liberty in their best interests for care or treatment to which they lack the capacity to consent themselves
Guiding principles	The five principles set out in chapter 1 which have to be considered when decisions are made under the Act
Lay Manager	The Trust Board delegates certain statutory functions under the MHA, to other staff; but the power to discharge detained patients from their section may only be exercised by three or more members of a committee, appointed by the Trust, who are not employees i.e. people who are on the staff of the hospital or who have a financial interest in it. These are called Lay Managers.
Local Authority	The local authority responsible for care and support services in a particular area of England, which is a local authority for the purpose of the Care Act 2013 (except where otherwise indicated).
Medical recommendation	Normally means a recommendation provided by a doctor in support of an application for detention or a guardianship application
MCA	Mental Capacity Act
MHA	Mental Health Act
MHL	Mental Health Legislation – a term that incorporates MHA and MCA and any associated legislation
MHLA	Mental Health Legislation Administrator – administers the statutory functions of the MHA as delegated by Trust Board and any relevant MCA functions.
MHLO	Mental Health Legislation Office
Nearest Relative	A person defined by section 26 of the Act (and in relation to children and young people, sections 27 and 28) who has certain rights and powers under the Act in respect of a patient for whom they are the nearest relative
Part 2 (Part II)	The part of the Act which deals with detention, guardianship and community treatment orders for civil (i.e. non-offender) patients. Some aspects of part 2 also applies to some patients who have been detained or made subject to guardianship by the courts or who have been transferred from prison to detention in hospital by the Secretary of State for Justice under part 3 of the Act
Part 3 (Part III) (Forensic)	The part of the Act which deal with patients who have come through the courts or prison

RC	Responsible Clinician - The Approved Clinician (AC) with overall responsibility for a patient's case.
Recall	RC power to recall a patient from a CTO when mandatory conditions are breached or there are serious concerns for the health and safety of the patient or others
Remote Hearings	Hearings held to review or to hear appeals from patient's against their detention under the MHA against via a video conferencing platform.
Revocation	When the RC makes a decision to revoke a CTO based on assessment during recall. Revocation can only follow recall and reinstates the section prior to the CTO
SOAD	Second Opinion Appointed Doctor – appointed independently by the CQC to certify treatment for mental disorder in line with MHA

## 9. AUDIT AND ASSURANCE

Element to be monitored	Lead	Tool	Freq	Reporting Arrangements	Acting on Recommendations and Lead(S)	Change in Practice and Lessons to be shared
MC Assessments / S132 / s17 / IMHAs	HMHL	MHA/MCA Monitoring Tool	monthly	Reported monthly by Matrons to Trust Mental Health Legislation Manager and Chair of MHLC	MHL	
MHA Compliance and CTOs	HMHL	MHA /MCA Monitoring Tool	monthly	Reported monthly by CNMs to Mental Health Legislation Manager and Chair of MHLC	MHL	

## 10. APPENDICES

Appendix 1	Equality Assessment
Appendix 2	Community Treatment Order Procedures
Appendix 3a	Lay Manager Procedures
Appendix 3b	Lay Manager Decision Form
Appendix 3c	Lay Manager Decision Form – Nearest Relative Barring Order
Appendix 4	s132 / s132a Patient Rights Procedures

### COVID / EMERGENCY ARRANGEMENT APPENDICES

Appendix 5	Section 12 / Approved Clinician Procedures
Appendix 6	Mental health Tribunal and Court Hearings by video
Appendix 7	Joint Guidance for Medical Examination of Patients
Appendix 8	Temporary Changes to the MHA
Appendix 9	Standard Operating Procedure for maintenance of Section 12/AC approval records and Appraisal of practitioners approved under the Mental Health Act 1983





**Equality Analysis Screening Form**

A word version of this document can be found on the HR support pages on Connect  
<http://connect/corporate/humanresources/managementsupport/Pages/default.aspx>

<b>Title of Proposal</b>	<b>MHL01 MHA POLICY</b>			
<b>Person Completing this proposal</b>	<b>LOUISE MCLANACHAN</b>	<b>Role or title</b>	<b>HEAD OF MENTAL HEALTH LEGISLATION</b>	
<b>Division</b>	<b>CORPORATE</b>	<b>Service Area</b>	<b>MEDICAL</b>	
<b>Date Started</b>	<b>JULY 2020</b>	<b>Date completed</b>	<b>October 2020</b>	
<b>Main purpose and aims of the proposal and how it fits in with the wider strategic aims and objectives of the organisation.</b>				
To ensure compliance with the Mental Health Act				
<b>Who will benefit from the proposal?</b>				
Patients, clinical staff, MH Legislation staff and Lay Managers				
<b>Impacts on different Personal Protected Characteristics – Helpful Questions:</b>				
<i>Promotes equality of opportunity</i>		<i>Promotes involvement and consultation Protects and promotes human rights</i>		
<b>Please click in the relevant impact box or leave blank if you feel there is no particular impact.</b>				
<b>Personal Protected</b>	<b>No/Minimum Impact</b>	<b>Negative</b>	<b>Positive</b>	<b>Please list details or evidence of why there might be a positive, negative or no impact on protected</b>

Characteristic		Impact	Impact	characteristics.
<b>Age</b>	X			
Including children and people over 65 Is it easy for someone of any age to find out about your service or access your proposal? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
<b>Disability</b>	X			
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
<b>Gender</b>	X			
This can include male and female or someone who has completed the gender reassignment process from one sex to another Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your proposal?				
<b>Marriage or Civil Partnerships</b>	X			
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
<b>Pregnancy or Maternity</b>	X			
This includes women having a baby and women just after they have had a baby Does your service accommodate the needs of expectant and post natal mothers both as staff and service users? Can your service treat staff and patients with dignity and respect relation in to pregnancy and maternity?				
<b>Race or Ethnicity</b>	X			
Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees What training does staff have to respond to the cultural needs of different ethnic groups? What arrangements are in place to communicate with people who do not have English as a first language?				
<b>Religion or Belief</b>	X			
Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area? When organising events – Do you take necessary steps to make sure that spiritual requirements are met?				
<b>Sexual Orientation</b>	X			
Including gay men, lesbians and bisexual people Does your service use visual images that could be people from any background or are the images mainly heterosexual couples?				

Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?				
<b>Transgender or Gender Reassignment</b>	<b>X</b>			
This will include people who are in the process of or in a care pathway changing from one gender to another Have you considered the possible needs of transgender staff and service users in the development of your proposal or service?				
<b>Human Rights</b>			<b>X</b>	<b>Ensuring all legal rights are adhered to under the MHA</b>
Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger? The detention of an individual inadvertently or placing someone in a humiliating situation or position?				
<b>If a negative or disproportionate impact has been identified in any of the key areas would this difference be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)</b>				
	<b>Yes</b>	<b>No</b>		
<b>What do you consider the level of negative impact to be?</b>	<b>High Impact</b>	<b>Medium Impact</b>	<b>Low Impact</b>	<b>No Impact</b>
If the impact could be discriminatory in law, please contact the <b>Equality and Diversity Lead</b> immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required.				
If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the <b>Equality and Diversity Lead</b> before proceeding.				
If the proposal does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the <b>Equality and Diversity Lead</b> .				
<b>Action Planning:</b>				
How could you minimise or remove any negative impact identified even if this is of low significance?				

How will any impact or planned actions be monitored and reviewed?

How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.

Please save and keep one copy and then send a copy with a copy of the proposal to the Senior Equality and Diversity Lead at [hr.support@bsmhft.nhs.uk](mailto:hr.support@bsmhft.nhs.uk). The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis.

## COMMUNITY TREATMENT ORDERS

### Principles of the Mental Health Act

Every decision you make under the Mental Health Act must be informed by the 5 Guiding Principles.

1. Least restrictive option and maximising independence

Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.

2. Empowerment and involvement

Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.

3. Respect and dignity

Patients, their families, and carers should be treated with respect and dignity and listened to by professionals.

4. Purpose and effectiveness

Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

5. Efficiency & equity

Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention

### Using this guide

In addition to this guide is the flowchart contained in Appendix A. Teams who work with people on Community Treatment Orders are advised to have a laminated A3 version of the flowchart on their wall.

#### 1. Eligibility for Community Treatment Orders (CTOs)

Before a CTO can be considered, it must be established that the patient is eligible. They must be either "detained" or "Liable to be Detained" under section 3 or one of the unrestricted Part 3 (forensic) sections listed in the Act (see box 1 below).

Box 1.

<b>Authority for Detention</b>	<b>Section</b>
<b>an application for admission for treatment</b>	<b>3</b>
<b>a hospital order (without a restriction order)</b>	<b>37 or 51</b>
<b>a hospital direction (but no longer a limitation direction)</b>	<b>45A</b>
<b>a transfer direction (without a restriction direction)</b>	<b>47 or 48</b>

They do not have to be in hospital, so a CTO can commence when someone has already gone home on Section 17 leave.

If someone is sent home on Section 17 leave and it is anticipated that their period of leave will exceed seven days, then the Responsible Clinician (RC) must consider the option of using a CTO and record the outcome of this consideration.

A CTO is not an option as an alternative to admission because it can only come after a patient has been detained, however it may make it possible for a RC to discharge a patient earlier rather than keep them on the ward.

### **1.1 Patient's Agreement**

Clearly, the patient does not have explicitly to agree to being placed on a CTO, however, for it to have a chance of being successful, the patient would need to understand what is being asked of them and would need to share the RC's wish for the CTO to work. While therefore, agreement is not required, the lack of agreement might well be an indicator that CTO is not appropriate.

## **2. Criteria for Community Treatment Orders**

The Criteria are clearly set out here:

1. the patient is suffering from a mental disorder of a nature or degree which makes it appropriate for them to receive medical treatment;
2. it is necessary for the patient's health or safety or for the protection of others that the patient should receive such treatment;
3. subject to the patient being liable to be recalled as mentioned below, such treatment can be provided without the patient continuing to be detained in a hospital;
4. it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) of the Act to recall the patient to hospital; and
5. Appropriate medical treatment is available for the patient.

All criteria have to be met or a CTO cannot be used.

## **3. AMHP's agreement to Community Treatment Order**

CTOs should be part of the normal multi-disciplinary process and therefore the AMHP may sometimes be a member of the same multi-disciplinary team as the RC. Where

there is no AMHP in the team and the AMHP who applied for the Section 3 is not better placed than others are, the AMHP will be accessed through the normal AMHP rota.

The AMHP has to agree that the criteria are met and that the CTO is appropriate in the circumstances or the CTO cannot go ahead.

As in all parts of the Mental Health Act, the AMHP must consider the principles in the Code of Practice. This includes the Empowerment and Involvement Principle so it would be expected that the patient would be interviewed by the AMHP before agreement is given.

In addition, the principle says, "The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this" and in view of the nature of CTO, it would be normal to consider their views as part of the process of deciding on appropriateness.

#### **4. Care planning**

The success of a CTO will depend on all the components being in place. Before the CTO 1 is completed, there should be a clear care plan agreed between all the partners providing care. Patients on CTOs are entitled to aftercare under section 117. This care planning will also include discussion about how the patient will be recalled if necessary.

The patient will have a different RC in the community and the proposed RC and the team must be fully involved in the care planning, including the discussion about conditions needed to deliver it safely.

#### **5. Effects of CTO**

The CTO removes from the hospital managers the power to detain the patient. The patient does not have to leave hospital immediately. If they remain in hospital after the CTO comes into force it will be as a voluntary patient.

The section 3 (or forensic section) under which the patient was detained still exists in the background - it has in effect been frozen. (See Recall and Revocation)  
Should an order of direction under Part 3 of the Act come to an end, then so too does the CTO which relies upon it.

People on CTO are no longer "detained" or "liable to be detained".

Under section 133 of the Act, Hospital Managers have a duty to inform the nearest relative when someone is discharged from being detained. This duty applies when a patient is put on a CTO. The patient (or the nearest relative) may choose for the nearest relative not to be informed.

This information should be given to the Nearest Relative at least 7 days before the CTO begins though if there is less than seven days between the decision being taken and the date of discharge the patient's detention should not be extended. The RC must ensure that this information is given to the Nearest Relative

## **6. CTO Conditions**

### **6.1 Mandatory Conditions**

The two mandatory conditions apply to all CTOs:

1. The patient must make themselves available for examination by the RC so that they can consider if the CTO should be extended; and
2. They must also make themselves available to see the SOAD if required.

If one or both of the mandatory conditions are broken, this is sufficient grounds for the RC to recall the patient however they must be given adequate opportunity to comply before recall is considered.

### **6.2 Other Conditions**

The RC can, with the AMHP's agreement, set other conditions. These must however, be necessary or appropriate to help ensure that the patient receives their treatment, prevent risk of harm to the patient's health or safety or to protect other people. Failure to adhere to these other conditions would not, of itself, give grounds to recall a patient to hospital although they would be part of the considerations that might lead an RC to decide that recall was necessary.

All the conditions should be included on Form CTO1.

Conditions should be:

- Kept to a minimum number
- Restrict the patient as little as possible
- Have a clear rationale
- Be expressed clearly and precisely so the patient, and the whole care team, can understand what is expected.

### **6.3 Variation of Conditions**

Although the RC does not need the AMHP's agreement to vary conditions, they must not use this to impose conditions to which the AMHP was not agreeable. The setting of conditions can make or break a CTO and they should be agreed at the start and varied as little as possible so that the patient and the rest of the MDT are fully aware of the conditions and the effects of breaking them.

Once a patient has been put on a CTO, some of the original conditions may not be appropriate or other conditions may seem necessary. For example, sometime after the start of the CTO it may be decided that in order to remain well, a patient should attend an activity which was not available when the CTO1 was filled in.

The RC can vary the conditions on Form CTO2, which is then sent to the MHLA. Variation of conditions should be discussed with the MDT and the patient and the agreement / compliance of the patient sought prior to the variation taking place.



If the RC feels that some conditions can be suspended temporarily, they can do this without any formal paperwork but this should be discussed with the MDT and recorded in the patient record.

## **7. Filling in the form CTO1**

The RC fills in Part 1 of Form CTO1 and the AMHP fills in Part 2. The patient's RC then signs part 3.

If the RC in the community is different from the in-patient RC, the community RC should sign Part 3 of CTO1 at which point they will assume responsibility for the patient.

Due to the inability to rectify this document, the RC should have it scrutinised by the Mental Health Legislation Administrator (MHLA) prior to completion of Part 3.

## **8. Recall**

### **8.1 Why and When**

If the RC believes that the CTO is not working and there is evidence of relapse or high risk behaviour, then they should consider recalling the patient to hospital. This can be done for the following reasons:

- The patient needs to receive treatment for mental disorder in hospital, and there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled; or
- The patient failed to comply with a mandatory condition.

The failure to comply with other conditions may contribute to the evidence for the first reason, but if breaking the condition does not lead to increased risk, then there would need to be other evidence before recall was possible.

### **8.2 Where**

The patient can be recalled to a hospital (including outpatient). This would include outpatient sessions held in resource centres etc.

The hospital to which the patient is recalled does not need be the same one as the patient was detained at under the section 3 (or forensic section). However, if it is a different hospital the RC must tell the MHL Office of the original hospital.

A patient on CTO may have been admitted to hospital informally while still on CTO. It might then become clear that they meet the conditions for recall. The RC should follow the normal procedure and when the CTO3 is given to the patient, they will be on recall and no longer informal.

### **8.3 Making the decision**

Responsibility for making this decision resides with the RC alone; however, in most circumstances it would be best to make this decision with colleagues from the multi-

disciplinary team. This will enable the RC to ensure they have the evidence from the whole team and will allow clarity about how the process will be carried out.

Consideration should also be given to alternative ways of managing the patient in the community e.g. involvement of Home Treatment Team.

The Code of Practice says the CTO3 should be given to the patient in person wherever possible, if this is not possible then served to the patient's last known address and the MDT could contribute to the discussion about the best way to do this.

The way a person will be recalled should be considered and discussed with them at the care-planning stage, before CTO commences. The MDT would then decide on the details in the particular circumstances.

For example, if there is an increase in risk, the team should consider the safest way for the serving of the CTO3:

- Who should serve the paper?
- How many people should be involved?
- Where and when should the CTO3 be served?
- Will there be a negotiation with the patient about when they should be admitted?
- If it is decided that the patient should be allowed to make their own way to hospital, at what point will they be deemed to be AWOL?
- To which hospital should the patient be recalled?

The RC must complete CTO3 with the original going to the patient and a copy being sent to the hospital to which the patient has been recalled.

If the person is recalled to a different hospital, the hospital in which they were detained prior to the CTO is still the "Responsible Hospital" and the managers must be informed of the recall.

#### **8.4 Transportation**

The recall process should be as non-threatening as possible and the process of getting the patient to hospital will usually be a matter for negotiation. The Participation Principle is an important guide and if a patient will attend in a relative's car or under their own steam, this may well be appropriate. Recall would not involve the police until other methods had failed and the patient is declared AWOL.

The receiving ward must record the start of the recall period of 72 hours on form CTO4 and send this to the MHL Office.

#### **8.5 Recall of CTO Patients Already in Hospital**

Someone who is on CTO may enter hospital on a voluntary basis without being recalled.

When this happens the following points should be noted:

- They cannot be given treatment against their will as their consent to treatment is covered by Part 4A rather than Part 4.
- They cannot be detained in hospital if they wish to leave using the nurses' holding power under Section 5(4) or the doctor's holding power under Section 5(2). This is because section 5 of the Act expressly excludes community patients, recalled or unrecalled, from the powers in that section.

It is permissible to recall a patient who is already in hospital. The most frequent reasons for this will be:

- To give the person treatment when they are not willing to consent to it;
- To prevent someone leaving the ward when it is deemed a risk for them to leave - the circumstances under which section 5 would be used if they were not on CTO; or
- As a preliminary to revoking their CTO.

**Revocation can only take place once a patient has been recalled.**

It is vital that when a CTO patient is recalled, arrangements are made for the transfer of responsibility from the current RC to the AC in charge of this period of inpatient care so that so that recall can be used in circumstances where Section 5 would otherwise be used.

### **8.6 Recall: Absent without Leave**

If the patient, having received a CTO3 recalling them to hospital, does not go to hospital or leaves hospital while on recall, they will be Absent Without Leave or AWOL and the Missing Patient procedure must be followed.

While AWOL they can be taken into custody and returned to the hospital by any approved mental health professional, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the RC or the managers of the hospital.

This can only be done if it is:

- before the time at which the CTO would have expired;
- or before 6 months before the first day of AWOL.

In fact unless the patient's CTO has been extended twice or more (for a year) the last day will always be 6 months after patient went AWOL.

The 72 hour recall period starts again from the time the patient is taken into custody. If the patient was AWOL for:

- **28 days or less**, the CTO can continue as if he had not been absent;

- **29 days or more** the RC has a week to carry out the process of extending a CTO (using CTO8) or else it will expire at the end of a week starting on the first day of their arrival at hospital.

See Expiry and Extension of CTO below

### **8.7 Recall: Transfer**

It is possible to transfer a patient from the hospital to which they have been recalled to another hospital. This might well be used when an RC has recalled the patient to a hospital for out-patient treatment but when they get there it becomes clear that the patient needs to be admitted to a ward for further assessment while the treatment plan is reformulated. They may then need to be transferred to the in-patient unit where the bed is available.

Normally this will be within a single Trust so both units will have the same managers which make it all very easy as there is no special procedure.

However, transfer can also take place between different hospitals controlled by different managers. This might happen if a patient becomes ill and is recalled while a long way from home.

If the hospital to which the patient has been recalled is an independent hospital, the managers of the CCG which commission the bed can carry out the functions of the managers of the first hospital.

Should it be necessary to transfer the patient from the hospital to which they were recalled to another hospital, the RC will confirm that there is a bed available at the receiving hospital and that all arrangements have been made for the patient's admission. Once this is clear the managers, or the person to which this function has been delegated, of the transferring hospital will fill in the first part of CTO6 and send it with the original CTO4 to the receiving hospital so that it arrives before or with the patient.

When the patient is admitted, the receiving hospital will record the time of admission on the same CTO6 on which the transfer was originally authorised.

## **9. Revocation**

A CTO can only be revoked while the patient is detained in hospital as a result of being recalled.

Usually recall will have enabled the necessary assessment to have taken place or treatment be given, and the patient will be released. The RC should let them go as soon as the purpose for which they were recalled is completed and should not wait until the 72 hours is up.

Sometimes, once a patient has been recalled to hospital, the RC may consider that they need to remain in hospital for more than 72 hours. This will be the case if it seems that the arrangements for their treatment in the community are breaking down or they have become too unwell to leave the hospital.

Once the recall period of 72 hours comes to an end, the patient has to be released and cannot be detained using section 5(2) or 5(4).

If the RC decides that the patient needs to remain in hospital for more than 72 hours, they must revoke the CTO.

Revocation is only possible if the RC believes the patient fulfils the criteria for detention under S3 (or appropriate forensic section) and an AMHP agrees both that the criteria are met and that it is appropriate to revoke the CTO.

Both these are certified using form CTO5 which is sent to the hospital to which a patient is recalled with a copy to the managers of the hospital in which the patient was previously detained if different.

**The dates on the CTO4 and CTO5 should be the same time and date that the recall period started.**

Should the AMHP not agree to the revocation, the CTO will continue and patient cannot be detained in hospital beyond the 72-hour period.

## **9.1 Effects of Revocation**

The revocation revives the authority of the hospital managers to detain the patient - as if the CTO had never happened. The period of detention is for 6 months (then 6 months, then a year) as if it was a new section 3, regardless of how long the patient may have been on CTO or a section up to this point.

## **10. Expiry and Extension of Community Treatment Order**

### **10.1 Time scales**

Unless extended, a CTO expires at the end of the six months starting on the day on which it is made. (So, if it is made on 1 January, it expires at the end of 30 June).

It can be extended for a further six months, and then for a year at a time. (Six months is from the nth of Month 1 to the n-1th of Month 7, e.g. 24th January to 23rd July). Within the last two months of the period, the RC must examine patient to decide if they meet the criteria for extension.

The MHLA will send a reminder letter to the RC containing the expiry date and a reminder of the need to re-offer the patient their rights.

### **10.2 Criteria**

The criteria for extension of CTO are the same conditions as need to be met for original CTO.

- the patient is suffering from mental disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment;
- it is necessary for the patient's health or safety or for the protection of other persons that the patient should receive such treatment;

- subject to the patient continuing to be being liable to be recalled as mentioned below, such treatment can be provided without the patient being detained in a hospital;
- it is necessary that the responsible clinician should continue to be able to exercise the power of recall under section 17E(1) to recall the patient to hospital; and
- appropriate medical treatment is available for the patient.

### **10.3 Consultation**

There are at least three professionals involved in the extension of CTO. The RC must consult one or more professionals concerned with the patient's medical treatment. The proper forum for this decision is the MDT Meeting and all decisions to extend CTO should be discussed openly in the team. However, the decision is the responsibility of the RC.

The third professional involved in the process is an AMHP, who may or may not be within the same MDT.

### **10.4 AMHP**

Just as Community Treatment Orders cannot start without agreement of an AMHP, it cannot be extended without the agreement of the AMHP.

While it does not have to be the same AMHP as was involved in the original CTO, if that AMHP is available, or there is an AMHP with regular contact with the patient, for example working within the team, they may be preferable to an AMHP from the rota. The guidance stresses that the AMHP must be acting on behalf of an LA.

In order to ensure this, the AMHP must be licensed by the Local Authority responsible for the patient. If there is an AMHP within the same MDT as the RC but the patient comes from another local authority area, the RC needs to ensure that an AMHP from the responsible LA is involved in the completion of the CTO.

The AMHP must be satisfied that the criteria for CTO are met and that the extension of the CTO is appropriate in all the circumstances.

## **11. Bringing CTO to a close**

One criticism of Community Treatment Orders is the potential difficulty of getting off it. The CTO should not be continued beyond the point at which the criteria are no longer met and cannot be extended if it is no longer appropriate. The point of extension is an important opportunity to ensure that patients are not kept on a CTO longer than is required.

The Principles must be considered at this point as in all decisions under the Act.

- 1. Least Restrictive Option and Maximising Independence:** Being on CTO is clearly more restrictive than living in the community with no compulsion.

Guardianship should be considered as part of a step-down process towards withdrawal of compulsion.

2. **Empowerment and Involvement:** The patient's experience of being on CTO should be considered and their attitude to extension is a vital ingredient in the decision. If it is decided to continue the CTO, the reasons for this should be discussed with the patient and they should be assisted to contribute to a plan for bringing the CTO to an end in the future. Carers should also be consulted so that their experience can be considered in the decision.
3. **Respect and Dignity:** "They must consider the patient's views, wishes and feelings (whether expressed at the time or in advance), so far as they are reasonably ascertainable, and follow those wishes wherever practicable and consistent with the purpose of the decision." If the patient does not want to continue on the CTO, both the RC and AMHP should follow this wish unless there are compelling reasons why they should not.
4. **Purpose and Effectiveness:** Is the CTO really fulfilling the purpose of minimising the negative effects of mental disorder and providing safety.
5. **Efficiency and Equity:** is the CTO providing high quality care and are all services working together to facilitate timely, safe and supportive discharge from the CTO

## 12. Hospital (Lay) Managers

The RC confirms their intention to extend Community Treatment Orders and the AMHP confirms their agreement on form CTO7.

When the MHL Office receive the CTO7 they book a Lay Manager panel who have a duty to consider discharging the patient from CTO. This discharge would also bring to an end the underlying section 3 (or forensic section) on which the CTO was based.

A full hearing is held regardless of whether the patient is contesting the extension or not. The Lay Managers will be presented with written and verbal evidence as to the patient's current care, situation, treatment, and progress towards discharge.

If the Lay Managers decide not to discharge the patient, they must arrange for the patient to be told about the extension if they are not present at the review hearing.

The MHLA must also take reasonable steps to arrange for the person they think is the patient's nearest relative to be informed as soon as practicable, unless the patient has requested otherwise (or does not have a nearest relative).

## 13. Treatment on Community Treatment Orders

The treatment of unrecalled Community Patients, people on CTO, falls under Part 4A of the MHA, rather than Part 4. When a Community Patient is recalled, they are once again subject to Part 4.

Treatment can only be given if:

- the patient has capacity and consents and treatment is certified by the RC (completes a CTO12 certificate), or
- the patient lacks capacity to consent but does not actively object
- in an emergency to a mentally incapable patient who resists
- consents and then the treatment is medication or ECT (i.e. treatments contained in Section 58 and 58A), the treatment is certificated by a Second Opinion Approved Doctor (CTO11 certificate)

The only exception is treatment given in accordance with section 57 where additional safeguards are required

### **13.1 Patients with Capacity to Consent to Treatment.**

A patient with capacity to consent to treatment cannot be treated against their will under Part 4A unless they have been recalled. The recall period is governed by s62A. The RC should assess capacity to consent to treatment at the end of the first month of the CTO (or at the end of the original 3 month period, whichever is longest).

### **13.2 Patients who lack Capacity to Consent to Treatment**

If the patient's capacity to consent is in doubt, there must be an assessment of their mental capacity to make a decision about their treatment. This assessment must be properly recorded on the standard Trust MCA forms. If the assessment indicates a lack of capacity, then treatment can be authorised in the following ways:

- If the patient has given someone Lasting Power of Attorney for health and personal welfare decisions, the attorney can consent to treatment on behalf of the patient. (Before treating on this basis, the Approved Clinician in charge of the treatment must check the power of attorney to establish that it is registered and that it does apply to health decisions rather than to financial decisions - it cannot cover both); or
- If the case has been taken to the Court of Protection there could be a deputy with the power to make health and personal welfare decisions or a single decision of the Court to cover this circumstance.

The Approved Clinician can authorise treatment as long as none of the following applies:

- The patient has made a valid Advance Decision to Refuse Medical Treatment which is applicable to the proposed treatment, or
- There is no Attorney (set up by a Lasting Power of Attorney for health and personal welfare) who objects to the treatment, or
- The Court of Protection has not ruled against the treatment, or
- The patient seems to object to the treatment, or
- Force would be necessary to give the patient the treatment



### **13.3 The role of the Second Opinion Approved Doctor (SOAD)**

Treatments requiring a certificate under S58 (e.g. medication) require a Part 4A certificate (CTO11) from a SOAD, certifying that the treatment is appropriate for patients subject to a CTO.

Subject to the criteria, set out above patients can be treated without such a certificate for the first month of CTO or until the end of the original 3 month period of detention, whichever is later.

The CTO11 also enables SOADs to approve treatments that can be given to patients if they are recalled to hospital, it is therefore important that RCs consider this issue prior to requesting the SOAD and provide sufficient information to the SOAD for his consideration.

This will also allow treatment to continue if the order is revoked, but only to enable compliance with S58 certificates.

## **14. Discharge from Community Treatment Orders**

### **14.1 What is Discharge?**

Discharge from Community Treatment Orders also discharges from the section the CTO was based on. Therefore, discharge from CTO means that the patient is no longer detained under the Mental Health Act.

### **14.2 Who can discharge?**

The following can all discharge patients from Community Treatment Orders:

- The Responsible Clinician
- Patient's Nearest Relative
- The Lay Managers
- The Tribunal
- Secretary of State

### **14.3 The Responsible Clinician (RC)**

The RC can discharge at any time. Indeed the RC should discharge if they think that the criteria for the CTO are no longer met. They do not require agreement from other professionals but discharge should normally follow discussion within a multi-disciplinary team.

The RC orders the discharge using the standard Section 23 discharge form which is sent to the MHL office.

## **14.4 The Nearest Relative**

The Nearest Relative has the same power to discharge the patient, as they would have had when he was under section 3.

The NR must order the patient's discharge in writing and must give the hospital managers 72 hours' notice of their intention to discharge. The notice and order of discharge can either be given to the hospital managers or an officer authorised to receive it or posted to the hospital.

The RC has 72 hours from receipt to consider whether to bar the request. If the RC thinks that the patient will act in "a manner dangerous to other persons or themselves", they should complete form M2 and return it to the MHLA before the end of the 72 hours. This is a barring order which:

- blocks the discharge; and
- prevents a further discharge by the NR at any time within the following 6 months.

Having received the barring order, the MHL Administrator must arrange for an independent review by the Lay Managers and the Nearest Relative to be informed in writing without delay. The nearest relative would then have the right to apply to a Mental Health Review Tribunal within 28 days, but cannot make a further request for discharge to the hospital managers for 6 months (even if their legal status were to change).

If the RC does not bar the discharge, or fails to do so within the 72 hour limit, the patient will be discharged from the CTO. If the patient was recalled to hospital at the time of the discharge, they could be released from hospital, as there would be no authority to detain them, although they could agree to remain as an informal patient.

## **14.5 The Hospital Managers (Lay Managers)**

The (hospital) Lay Managers can discharge the patient from Community Treatment Orders at any time. They have a responsibility to consider discharge when they receive a CTO7 extending Community Treatment Orders and will hold a full review hearing.

The decision has to be made by a panel of the same people who have the delegated function of making decisions about discharging detained patients on behalf of the Non-Executive Directors.

There will be 3 on the panel and the decision to discharge must be unanimous (should there be more than 3 Hospital Managers on the panel, at least 3 must agree with the majority decision).

The Lay Managers cannot order a "deferred" discharge for a patient on CTO, only absolute.

## **14.6 The Tribunal**

The MHLAs have a duty to refer cases to The Tribunal when a CTO is revoked.

The Tribunal can discharge patients from CTO both while they are in the community and while recalled.

It cannot discharge people from detention onto CTO - it has no power to make a Community Treatment Order. It can, however, recommend that an RC consider CTO. The Tribunal cannot order “deferred” discharge for a patient on CTO, only absolute.

## The Forms – to be read in conjunction with the MHL05 MHLA Policy

### **CT01**

RC and AMHP fill in  
CT01.  
Send to managers of  
hospital

**Original: Retained by MHLA; Scanned and uploaded to RiO**

**MHLA writes to Patient, GP, Nearest Relative (where applicable) to inform of CTO.**

**Care Coordinator will inform service user of their rights and give them information leaflet**

### **CT02**

Variation: Form  
CT02 - send to  
managers of  
responsible  
hospital.  
Suspension: no  
particular form.

**Original: Retained by MHLA**

**Copy filed in Care Record**

### **CT03**

RC gives P  
notice of recall  
on CT03

**Original given to the Patient**

**Copy to the MHL Office**

**If the Patient is recalled to a different hospital, the RC to inform the MHLA of details of responsible hospital and MHLA will write to them**

### **CT04**

Managers record  
start of detention  
on CT04

**Receiving ward completes this form**

**Send the original to the MHL Office**

### **CT05**

Order revoking CTO  
and AMHP's  
agreement on Form  
CT05.  
Send to managers  
of hospital to which  
P recalled.

**Original: Retained by MHLA (Ensure time & date is the same as recorded on the CT04)**

**MHLA gives letter to Patient informing them of revocation and their rights. Also writes to GP & Nearest Relative (where applicable) to inform of revocation**

**CT06**  
Managers of first hospital  
authorise transfer with  
CT06.  
Must be satisfied that  
receiving hospital has  
made arrangements to  
admit P.

**MHLA sends original CT06 to the MHLA of  
receiving hospital with CT04**

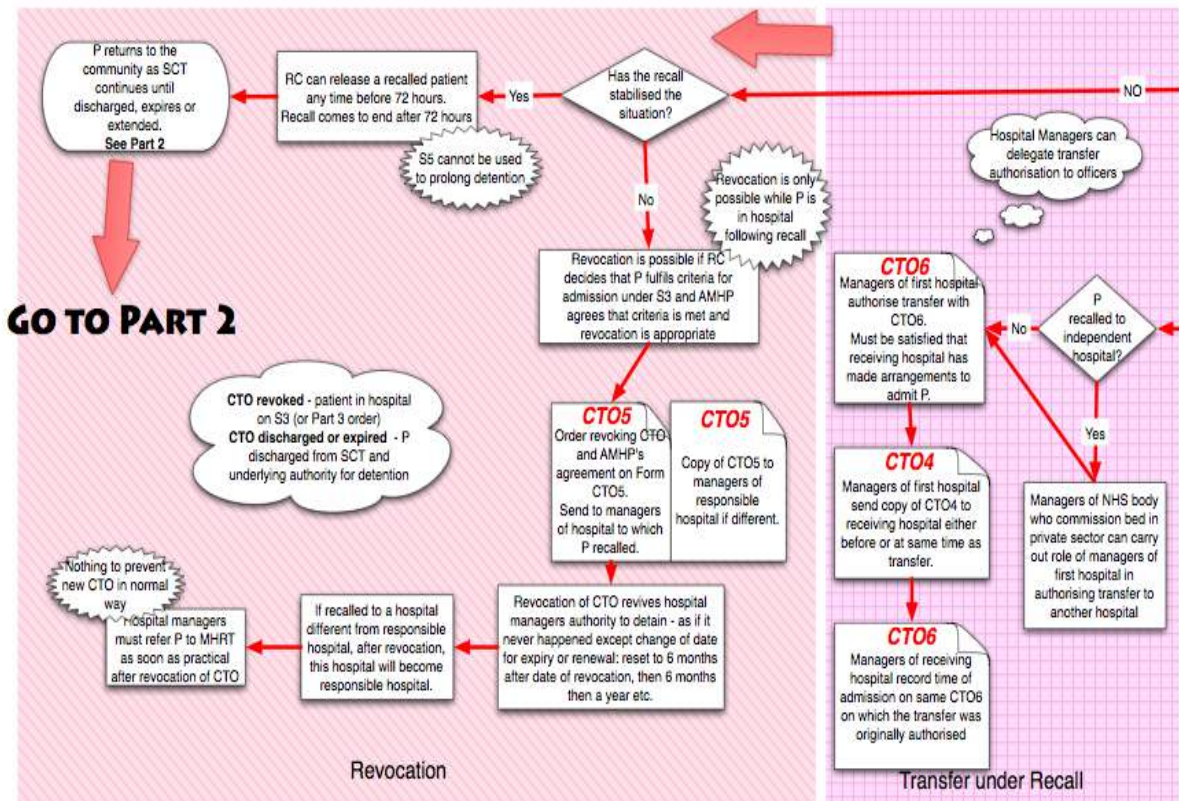
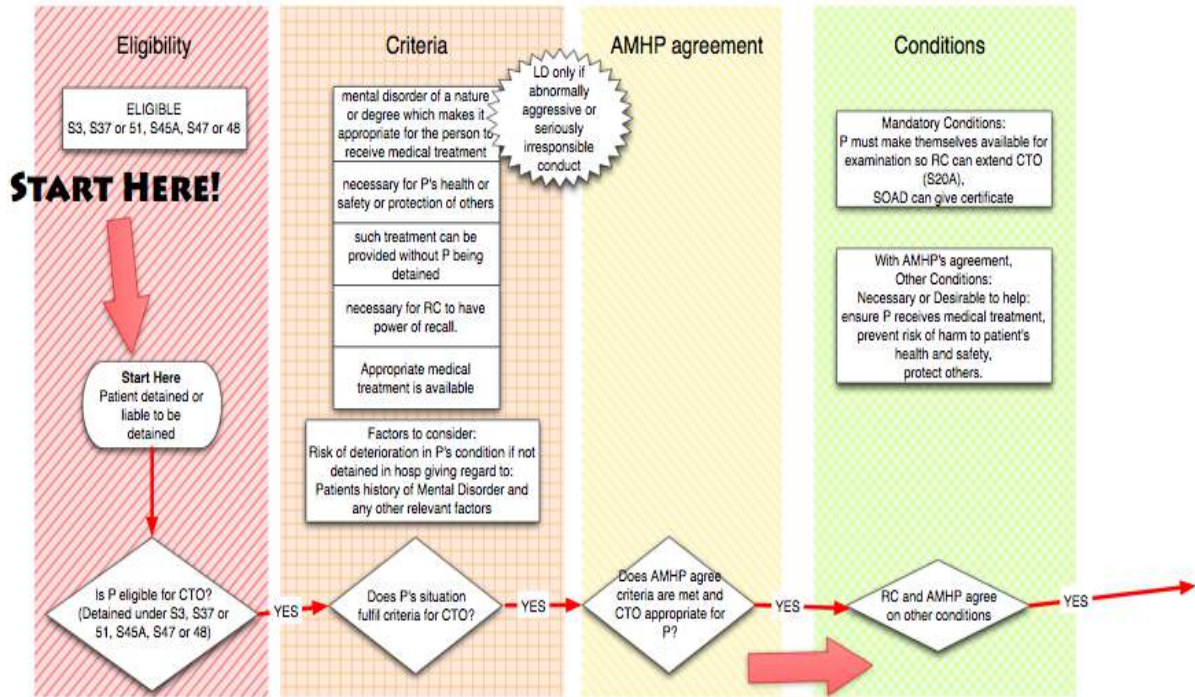
**CT07**  
RC's report and AMHP's  
agreement must be made  
on CT07.  
Send to managers of  
hospital.

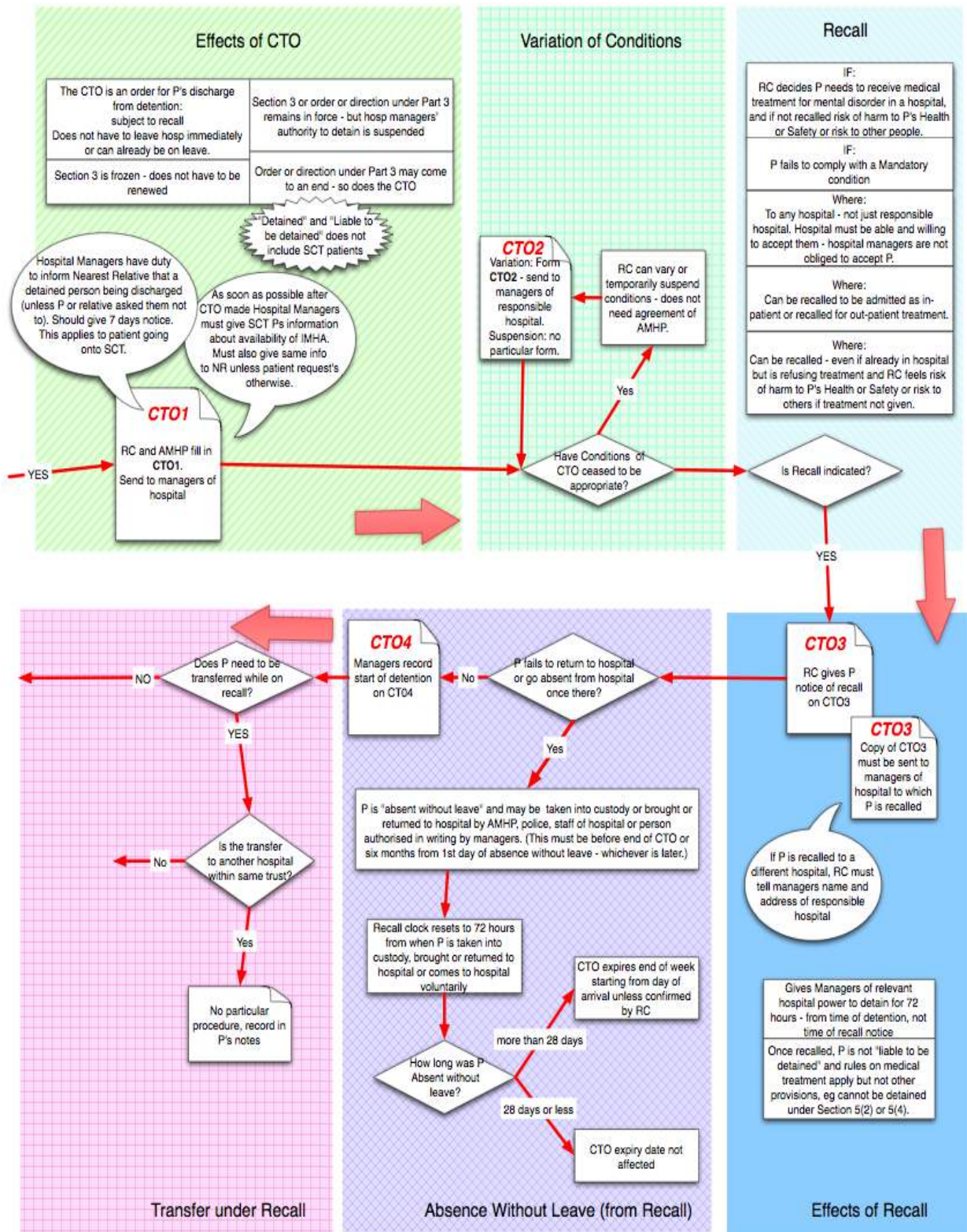
**Form sent by RC to MHLA.**

**MHLA arranges Hospital (Lay) Managers' Hearing.**

**MHLA writes to nearest relative (where  
appropriate)**

# Community Treatment Orders (Part 1 - CTO and Recall)





# LAY MANAGER PROCEDURES VERSION 3

OCTOBER 2020

(Original version April 2009)

LOUISE MCLANACHAN  
HEAD OF MENTAL HEALTH LEGISLATION



# Guidelines for Lay Manager Hearings

This document should be read in conjunction with Chapter 38 of the Mental Health Act Code of Practice (2015)

## 1. An Introduction to the Role of Lay Managers

### 1.1 Defining the 'Lay Manager'

The 'Hospital Managers' have a central role in operating the provisions of the Mental Health Act, hereafter referred to as the 'Act'. The Birmingham and Solihull Mental Health NHS Foundation Trust (The Trust) are defined as the 'Hospital Managers' for the purposes of the Act.

The Trust delegates certain statutory functions under the Act. Most of the 'Hospital Managers' responsibilities may be delegated to other staff, but the power to discharge detained patients from their section may only be exercised by three or more members of a committee, appointed by the Trust, who are not employees i.e. people who are on the staff of the hospital or who have a financial interest in it. These are called Lay Managers.

Appointments to Managers' panels should be made for a fixed period. Reappointment (if permitted) should not be automatic and should be preceded by a review of the person's continuing suitability (CoP 38.9)

## 2. The Sections of the Mental Health Act 1983 under which a Lay Manager hearing can take place are:

- 2.1 **Section 2** - Allows for compulsory admission and detention for up to 28 days for assessment; or assessment followed by treatment for a mental disorder.
- 2.2 **Section 3** - Allows compulsory detention for up to 6 months for treatment and is renewable for a further 6 months and subsequently 12 month periods.
- 2.3 **Section 37** - Hospital Order from the Court directing admission initially for up to 6 months (renewable on the same basis as Section 3).
- 2.4 **Section 37/41** - As for section 37, with restrictions added under section 41, which requires the consent of the Ministry of Justice for discharge from detention. **The Lay Managers can only make recommendations for discharge from detention to the Ministry of Justice following a hearing.**
- 2.5 **Section 47** - The transfer of a sentenced prisoner to hospital and their detention there, for up to 6 months initially. Once in hospital, the section operates like a Section 37.
- 2.6 **Section 47/49** - As for section 47, with restrictions added under section 49, which requires the consent of the Ministry of Justice for discharge from detention. **The Lay Managers can only make recommendations for discharge to the Ministry of Justice following a hearing.**
- 2.7 **Notional 37 (37N)** - A patient who ceases to be subject to a restriction order (s49) because his sentence has expired is referred to as a "Notional 37". This term, which is not found in the Act is used to signify that on the expiry of the sentence the patient is still subject to the s47 transfer direction order which has the same effect as a s37.
- 2.8 **Section 17A (-G)** - Certain categories of detained patients can be made subject to a Community Treatment Order (CTO) made on the application of the patient's

Responsible Clinician (RC). The CTO enables the patient to be discharged from hospital subject to specified conditions. The original section is not discharged, but remains in place to underpin the CTO. A CTO can be extended at the same intervals that apply to s.3 patients and on such extensions the Lay Manager must consider whether the power of recall is still required or whether they should exercise their power of discharge.

**2.9** Lay Managers and professionals involved in Lay manager hearings should at all times adhere to the Guiding Principles as detailed in the Code of Practice. The five overarching principles are:

- 1. Least restrictive option and maximising independence** Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.
- 2. Empowerment and involvement** Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.
- 3. Respect and dignity** Patients, their families and carers should be treated with respect and dignity and listened to by professionals.
- 4. Purpose and effectiveness** Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.
- 5. Efficiency and equity** Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention

### **3. When are Lay Manager hearings held?**

**3.1** Lay Managers:

- **may** undertake a review of whether or not a patient should be discharged from detention at any time at their discretion
- **must** undertake a review if the patient's RC submits a report to them under section 20 of the Act renewing detention or under section 20A extending the CTO
- **should** consider holding a review when they receive a request from a patient (who may be supported by their Independent Mental Health Advocate (IMHA) Independent Mental Capacity Advocate (IMCA), attorney or deputy or a carer, and
- **should** consider holding a review when the RC makes a report to them under section 25 barring an order by the nearest relative to discharge a patient from their section

**3.2** All renewal hearings will be held before the expiry date of the section.

## **4. Types of Hearings**

**4.1 Introduction** - A hearing is a significant occasion for the patient, since it provides an independent review of their current care and treatment, the reasons for their detention and the potential for discharge from detention. When undertaking a review the Panel must:

- a) adopt and apply a procedure which is fair and reasonable; and
- b) Not act unlawfully, that is, contrary to the provisions of the Mental Health Act 1983 and any other legislation and regulations, including the Human Rights Act 1998 and relevant equality and anti-discriminatory legislation.

### **4.2 Renewal (Review) and Appeal Hearings**

**4.3** As a Trust we do not differentiate between contested or uncontested renewal hearings in relation to procedure. CoP 38.43 says it is good practice to follow the same procedures to conduct reviews in uncontested cases as in contested cases. This is the case for the trust where all cases are given a full hearing whether that is face to face or video conference.

**4.4** Lay Managers should apply as much rigour to considering uncontested cases as to contested ones to ensure that the least restrictive option and maximising independence principle is being applied and those decisions are only being made on the basis of the statutory criteria (CoP 38.42).

**4.5** There may be occasions where renewal hearings have no professionals in attendance to present any evidence or their reports and it is acceptable for panels to conduct the review based on there being sufficient written information about the patient's history of care and treatment and details of any future plans available to them to make a decision about the renewal. (CoP 38.26)

**4.6** However, if the panel have reason to suspect the grounds for renewal are not correct, they may wish to adjourn and rearrange a full hearing when the professionals can be present to present their report.

**4.7** "Paper hearings" will be a rare exception with clear documented reasons for why this has occurred.

**4.8** Where the hearing is an appeal hearing the panel can expect the patient and their representative to attend. If the patient attends without a legal representative, the chair should determine whether it is appropriate to continue.

**4.9** A legal representative may attend the appeal hearing on behalf of the patient.

**4.10** The CoP 38.16-18 states that the Panel must consider the following questions, in the order stated:

**4.11** Patients detained under Section 2 or 4:

- a) **Is the patient still suffering from mental disorder?**
- b) **If so, is the disorder of a nature or degree which warrants the continued detention of the patient in hospital?**
- c) **Ought the detention to continue in the interests of the patient's health or safety of for the protection of other people?**

4.12 For other detained patients:

- a) **Is the patient still suffering from mental disorder?  
If so, is the disorder of a nature or degree which makes treatment in a hospital appropriate?**
- b) **Is continued detention for medical treatment necessary for the patient's health or safety, or for the protection of other people?**
- c) **Is appropriate medical treatment available for the patient?**
- d) **Consideration should also be given to whether the Mental Capacity Act 2005 can be used to treat the patient safely and effectively**

4.13 For patients on CTOs:

- a) **Is the patient still suffering from a mental disorder?**
- b) **If so, is the disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment?**
- c) **If so, is it necessary in the interests of the patient's health or safety or the protection of other persons that the patient should receive such treatment?**
- d) **Is it still necessary for the Responsible Clinician to be able to exercise the power to recall the patient to hospital? and**
- e) **Is appropriate medical treatment is available?**

4.14 CTO patients may be discharged in the same way as detained patients, if the patient no longer meets the criteria for CTO.

#### 4.15 **Nearest Relative Barring Discharge Order**

4.16 When a Nearest Relative's Discharge order has been barred by the RC, Lay Managers should consider holding a review

4.17 The Mental Health Legislation Administrator will request that three Lay Managers meet and consider the case. There will be no-one else in attendance at this meeting as it is an independent review.

4.18 If Lay Managers decide they are in agreement with the barring order, or with the Nearest Relative, no further action is required by the Lay Managers.

4.19 If they decide that further review of the case is needed, they must inform the Mental Health Legislation Administrator, who will book a formal review hearing for the Nearest Relative Barring Order

4.20 Also, if the hearing is being held under Section 25 – Barring Order, when a Responsible Clinician has barred the discharge by the nearest relative, **in addition to the above questions**, the following must also be considered:

- e) **Would the patient, if discharged, be likely to act in a manner that is dangerous to other people or to themselves?**

#### 5. **How are Lay Manager Hearings Arranged?**

5.1 Lay Manager Hearings are arranged by the Mental Health Legislation Administrators and are instigated by one of the criteria identified in point 4.

5.2 The following all apply to both face to face hearings and video conferences during times of emergency provisions unless otherwise stated.

- 5.3** The Mental Health Legislation Administrator is responsible for the following:
- Identifying if the hearing is appropriate
  - Providing the ward and the patient with a list of solicitors
  - Booking the venue or arranging the video conference invites
  - Booking Lay Managers
  - Inviting the professionals and the patient
  - Keeping all participants informed throughout the process
  - Providing advice to the Panel on points of legal issue where appropriate or being able to direct to the Head of Mental Health Legislation or Trust Solicitor where appropriate
  - Ensuring all reports are available
- 5.4** The ward staff (or care co-ordinator for CTO patients) must arrange for an appropriately approved interpreter to be present at the hearing if necessary in accordance with the Code of Practice.
- 5.5** The ward staff will arrange for legal representation with the patient and notify the MHL office.

## **6. Who Attends a Lay Manager Hearing?**

The following people attend the hearing:

- 6.1 Panel Chair** –prior to the hearing commencing, the panel must agree the chair. This is a key role with particular responsibilities for the conduct of the hearing itself and for initiating any further action. The identity of the chair of the hearing should never be presumed. This process is the same regardless whether the hearing is face to face or by video conference.
- 6.2 Panel members** – two further panel members constitute the Panel.
- 6.3 Patient** – If the hearing is an appeal hearing and the patient does not wish to attend, the Panel will ascertain the reasons why prior to the hearing. The Panel can then take one of the following courses of action:
- immediate adjournment; or
  - adjournment in consultation with the professionals concerned; or
  - conduct the hearing
- 6.3.1** In reaching their decision the Panel should take into account if there is sufficient time to hold a further hearing within the current period of detention.
- 6.3.2** In all circumstances where the patient refuses to attend, the Panel has the discretion to proceed in the patient's absence, but care must be taken that this discretion is not abused. This may be considered to be an acceptable practice if the hearing is a renewal hearing.
- 6.4 Nurse** – wherever possible the patient's care co-ordinator / named nurse should attend. When contributory factors prevent this, for example when it is not the named nurse's shift, another nurse, who knows the patient may attend, or if no nurse attends, then the Panel should make every effort to speak to a nurse who knows the patient.
- 6.5 Responsible Clinician (RC)** – the patient's current RC should attend a hearing. However, very occasionally it has to be accepted that other clinical priorities may make

this difficult. A deputy under the supervision of the RC who has been involved in the patient's care is therefore acceptable.

**6.6 Social Worker** – it is important that the patient's Social Worker or deputy should attend where possible.

**6.7 Patient's Representative** - the patient may request that a representative also attends; this may be a solicitor, relative or an advocate. The Panel should ensure that the patient's representative has a proper opportunity to speak at the hearing. **The patient's representative:**

- should be satisfied that the professionals and friends or relatives in attendance are asked the appropriate questions;
- is there to test the evidence given by the people present;
- should be satisfied that all questions the patient would want to be asked are covered;
- should not protect or restrict the patient from answering questions put by the Panel;
- should not try to restrict the Panel from asking questions they want to ask.

**6.8** If both the solicitor and the advocate arrive for the Hearing, it could be confusing if both attempt to represent the patient. The Panel should clarify which one is to act for the patient.

**6.9 Interpreter** – the ward staff will arrange for an interpreter to be present if necessary. Care should be taken to ensure that the interpreter acts appropriately and does not speak *on behalf* of the patient. A family member should never be used for this purpose.

**6.10 Any Other Person at the Request of the Patient** – the patient may request that another person, not previously covered by this list, should attend. The Panel should use their discretion in terms of practicality when assessing the numbers of attendees and whether it is appropriate for a particular individual to attend the hearing. The involvement of carer's, family members and other people who have an interest in the patient's welfare should be encouraged.

**6.11 Any Other Person with the Agreement of the Patient** – for example a student nurse, student doctor, trainee social worker, etc. The patient's agreement should be sought if the panel receive such a request.

## **7. Conduct of the Hearing**

**7.1** The Panel should decide the procedure for the conduct of the hearing. Generally it needs to balance the informality against the rigour demanded by the importance of the task.

**7.2** The Panel should meet on their own at least half an hour prior to the start of the hearing. The purpose of this time is to enable the Panel to cover the following items:

- **Select the Chair of the Panel** - The Panel should collectively agree the chair

- **Read and consider written reports** - The panel members should read the reports provided by the RC, nurse and social worker / care co-ordinator and ensure they were written within 4 weeks of the hearing date.
- **Check the s132 rights** – check the patient has been informed of their legal rights under s132
- **Ascertaining the attendance** - The Panel will be given a sheet with the list of:
  - a) who will be attending the hearing; and
  - b) what steps have been taken to inform the nearest relative (provided the patient does not object); and
  - c) whether the patient is to be accompanied by an advocate or legal representative or other persons.
- **Checking the patient's wishes / understanding** - Before the hearing starts, the Panel, through the Chair, should check:
  - a) if the patient understands why they are all meeting and the aim of the hearing;
  - b) If the hearing is a renewal / extension hearing
  - c) whether, the patient wishes to speak to the panel privately;
  - d) whether the patient, and / or representative has had the opportunity to read the written reports, or wishes to do so, in which case the opportunity must be granted;
  - e) If the hearing is an appeal, particular attention should be paid to the patient's wishes regarding the way in which the hearing is conducted.

**7.3** The Chair manages the conduct of the hearing throughout with the support of the other Panel members leading on the questioning of the professionals. The proceedings are confidential to those present.

**7.4** Before the hearing commences the Chair should:

- conduct the introductions of all those attending;
- check that the patient understands what is taking place;
- confirm that the patient agrees that all those attending the hearing should hear the entire proceedings. The Panel has discretion over the proceedings.
- make it clear to all those attending how the review will be conducted.

## **8. The Evidence**

**8.1** In order to achieve the aim of the hearing, the Lay Managers must consider all the relevant evidence

**8.2** The order of giving evidence is for the Panel to decide. It can be less intimidating for the patient if the RC is invited to give evidence first, justifying the reasons for detention. However, the patient should normally be invited to speak first particularly at a patient's appeal hearing, thereby acknowledging the importance of the patient in the proceedings.

### **8.3 Written Reports**

**8.4** Written reports should be provided to the MHL Office

**8.5** Section 2 hearings may have to be convened at short notice, (since the section only lasts for up to 28 days), and written reports, whilst desirable, may not always be available.



- 8.6 It is desirable that the professionals should have the opportunity to see each other's reports before the hearing starts, and the Panel should check whether this has been done.
- 8.7 The patient should be provided with copies of the reports as soon as they are available.
- 8.8 The author of the report will indicate any parts that should not be shown to the patient; the reasons behind this decision should be clearly documented.
- 8.9 The Mental Health Legislation Administrator will act in accordance with these wishes when providing copies of the report and advise the Panel accordingly.
- 8.10 The Panel may decide to overturn this decision. However this is not common and the Panel would have to be clear in justifying their actions. The Panel may prohibit the disclosure of a document or information to a person if they are satisfied that such disclosure would be likely to cause that person or some other person serious harm.
- 8.11 Where written reports are provided, the Panel should read them carefully and identify the main issues to be addressed at the hearing.
- 8.12 The reports should enable the Panel to develop an understanding of:
- the patient's mental disorder;
  - the reasons for the detention;
  - the patient's care and treatment plans;
  - the planning of after-care arrangements.

### **8.13 The Responsible Clinician (RC) Report**

- 8.14 The RC should provide an up to date report (written within 4 weeks of the hearing). This report must be authorised or authored by the patient's RC. The Panel should expect the report to contain;
- basic information about the patient i.e.;
  - name; age; home address
  - date and name of hospital admission
  - Date of MHA Section
  - date of most recent Tribunal
  - Confirm present diagnosis
  - Full details of the patient's mental state, behaviour and treatment for mental disorder
  - statement as to whether the patient has ever neglected or harmed himself, or has ever harmed other persons or threatened them with harm, at a time when he was mentally disordered, together with details of any neglect, harm or threats of harm;
  - an assessment of the extent to which the patient or other persons would be likely to be at risk if the patient is discharged by the Lay Managers and how any such risks could best be managed;
  - an assessment of the patient's strengths and any other positive factors that the Lay Managers should be aware of in coming to a view on whether he should be discharged;
  - Summary of progress including Section 17 leave of absence

- if appropriate, the reasons why the patient might be treated in the community without continued detention in hospital, but should remain subject to recall on Community Treatment Order
- Details of the care plan
- Current capacity to consent
- Criteria for detention and a record of consultation with the patient
- Current outlook including progress of Section 117/discharge arrangement
- Confirmation if appropriate treatment available

### **8.15 Social Circumstance Report**

The social circumstance report should be prepared by the patient's social worker or care co-ordinator (where appropriate in the community). The Panel may expect the report to contain:

- basic information about the patient i.e. Name; age; home address
- date and name of hospital admission
- MHA Section & date of application
- name & address of nearest relative
- Contact with patient and date of most recent discussion.
- Home & family circumstances.
- Views of nearest relative and their view of continued detention
- the views of any person who plays a substantial part in the care of the patient but is not professionally concerned with it;
- Views of the patient, including hopes, concerns and beliefs in relation to the hearing
- Opportunities for employment / occupation.
- Community support (including housing accommodation) and relevant medical facilities.
- Financial circumstances including welfare benefit entitlement.
- an assessment of the extent to which the patient or other persons would be likely to be at risk if the patient is discharged by the Lay Managers and how any such risks could best be managed.
- Detailed planning for after-care under Section 117.

### **8.16 Nurse's Report**

The nurse's report should be prepared by the patient's named nurse on their current inpatient ward and give the panel insight into the current inpatient spell on the ward. In BSMHFT we have OTs now working as part of the clinical team and they may provide the written report if they are the patient's key worker or named professional. The Panel may expect the report to contain:

- The nature of nursing care and medication being received
- Current care plans
- Observations levels
- Engagement with family and / or carers
- Incidents / AWOL
- Seclusion episodes or restraints

**8.17** Professionals should be invited in turn to present their reports. However it is essential that panel members are all able to ask questions and that the patient and each of the professionals is given the opportunity to speak objectively, frankly and freely. The same opportunities should be offered to the nearest relative and the patient's advocate or representative

### **8.18 Access to the reports denied to the patient**

**8.19** The patient's representative is entitled to the same information and rights as the patient. If the author of a written report has denied access to the patient, then this also extends to the representative. A report will only be withheld from the patient if the serious harm criterion is satisfied.

**8.20** However, where the representative is a professional legal representative, such as a solicitor, barrister or an advocate from an organisation recognised by The Trust to act for such purposes or is an IMHA, then access to reports or information denied to the patient may be granted under the following conditions:

- the Panel is satisfied that disclosure to the representative would be in the interests of the patient;
- the representative undertakes not to disclose the document or information either directly or indirectly to any other person without the Panel's consent

**8.21** The Panel may hear evidence relating to the withheld documents in the absence of the patient. The patient's representative may be present on such occasions if an undertaking is given not to disclose any information relating to that part of the hearing without the Panel's consent. (A verbal undertaking is acceptable and should be noted on the decision form)

**8.22** The patient's representative should be allowed to make submissions and representations to the Panel after evidence has been concluded. If the representative feels the Panel's questioning has not covered all relevant points, they should be invited by the Panel to question the professionals further.

### **8.23 Verbal Evidence**

**8.24** There are some essential issues which the Panel must ensure are covered, largely by their own questioning of those present as follows:

#### **8.25 Medical Staff and RC**

- the nature of the patients' mental disorder;
- the form and effectiveness of present and future treatment including:
  - Possible side effects of the patients' medication;
  - The likely effect of discontinuation of medication and the possible danger to the patient and others.

**8.26** Whether in the event that the Panel decides to uphold the appeal / not uphold the renewal there are any other issues to consider.

**8.27** Clarify if there are any representations made by victims regarding discharge of the patient.

#### **8.28 Care Co-ordinator / Named Nurse**

- Recent behaviour on the ward and if allowed S17 leave, how that is going.
- Compliance with medication.
- If the appeal / review is for a CTO patient, any relevant issues / concerns to be aware of?

## **8.29 Social Worker**

- Past circumstances and social behaviour.
- Detailed planning for aftercare under Section 117.
- The view of the Nearest Relative about continued detention

## **8.30 The Patient**

- Whether they would stay in hospital as an informal patient if the section were discharged.
- Would they continue to comply with medication as an outpatient, (Credibility of the answers would have to be assessed in the light of past evidence).
- For CTO patients, will they be willing to continue to comply with the conditions prescribed by the CTO

## **8.31 Style of Questioning**

**8.32** When necessary those giving evidence to the Panel should be questioned carefully by the Lay Managers to clarify areas of doubt or where more information is required.

**8.33** As a hearing can be a very stressful occasion for the patient, this should be reflected in the style of questioning adopted, which ought to be inquisitorial and not adversarial.

**8.34** Questions of a sensitive nature, or questions that either begin to, or, alter the informal feel of the hearing, should be avoided. An example being when a doctor is asked for the prognosis of a patient. The doctor may not be willing to respond in deference to the patient at which point this line of questioning should be dropped unless it is essential to pursue it.

**8.35** The chair should recognise and discourage examples of bad practice, controlling the conduct of the hearing throughout.

**8.36** The two wingers will start with the questioning of each professional and the chair will conclude with any remaining questions.

**8.37** An around the table discussion may develop as long as it is controlled by the Chair. However, overly formal cross-examination between professionals or by legal representatives should not be encouraged.

**8.38** The Panel must give full weight to the views of all the professionals concerned. However, they cannot take clinical decisions, nor question clinical judgement.

## **8.39 Assessing the quality of professional views**

**8.40** The main criterion is whether the report, written or verbal, assists the Lay Managers' understanding and contributes towards a decision consistent with the Act. To this end the Panel should be ready to:

- Distinguish between 'opinion and facts'.
- Be wary of personal views and impressions and stereo typing the patient.
- Note uncertainties of diagnosis and prognosis.
- Inquire about the treatment plan and how it meets the patients' illness and how it might develop.
- Consider conflicting professional opinions.
- Stress the importance of accurate data relating to behaviour, events & reports.
- Ask for a prediction of the future vulnerability of the patient or of possible dangers to the patient and to others.

- Question hearsay evidence when it is essential to the decision. An example of hearsay evidence would be when a community team is reported as being willing / unwilling to accept responsibility for the patient after discharge when no member of that team is present and no written report has been received from the team to confirm the evidence.

## **9. Concluding the Hearing**

When the discussion and questioning has been completed the Chair should thank all those who have attended the hearing and advise that the Panel will reach their decision in private.

## **10. Reaching the decision and after**

- 10.1** No Lay Manager should give any indication of a possible decision during a hearing, or at any other inappropriate time, nor show any other sign of pre-judgement or bias in decision making.
- 10.2** In reaching a decision, the Panel should make a reasoned judgement using their own skills and experience based on the evidence presented to them during the hearing.
- 10.3** The Panel should consider:
- What they have heard in relation to the aim of the hearing.
  - Whether the legal criteria for the detention in hospital or on CTO have been fully met. It should be remembered that if the Panel is considering a Barring Order under Section 25 they must, in addition, consider the fourth question in relation to dangerousness.
- 10.4** Panel members who do not record their detailed reasoned decisions are vulnerable to an application for Judicial Review. The Panel should discuss the evidence presented to them before coming to their decision.
- 10.5** The Panel are required to complete a 'Decision Form'. This form is designed to record the process and influencing factors by which the Panel reached their decision.
- 10.6** The Court of Appeal has held that section 23 requires three Lay Managers to vote in favour of discharge in order for the power of discharge to be effected. As in our Trust panels consist of three Lay Managers, this means a whole panel vote in favour of discharge is required, a majority decision is not sufficient.
- 10.7** If the panel do not all agree to the discharge, the patient remains detained.
- 10.8** If all three members of the panel are satisfied from the evidence presented to them that the answer to any of the questions set out above is 'no', the patient should be discharged.
- 10.9** In all cases, hospital managers have discretion to discharge patients even if the criteria for continued detention or a CTO are met. Managers' panels should always consider whether there are other reasons why the patient should be discharged despite the answers to the questions set out above; regard should be had to the principle of least restrictive option and maximising independence (CoP 38.19)
- 10.10** In cases where there is difficulty in reaching a majority view, Lay managers are encouraged to use the 'no' column as a focus to answer as a majority as this meets the CoP guidance.

## **11. Postponement or adjournment of a Lay Managers' panel**

**11.1** The Chair has the authority to adjourn a hearing if there is not sufficient evidence for the panel to reach a decision about whether the patient meets the criteria for detention.

**11.2** Reasons for adjournment would include:

- non-attendance of a panel member;
- non-attendance of key professionals resulting in insufficient evidence;
- unsatisfactory written reports/verbal reports;
- unresolved differences between professionals;
- undeveloped plans for care treatment;
- to allow time to seek clarification on any facts or law.

**11.3** The Mental Health Legislation Administrator retains responsibility for deciding on whether the re-convened hearing will be with the same, or a different panel, dependent on the circumstances for adjournment/postponement.

## **12. Communicating the decision**

**12.1** The panel will communicate the decision they have made, with the following considerations:

- the patient's wishes; and
- the appropriateness of communicating directly with the patient given any advised levels of risk.

**12.2** If the Panel members decide to release the patient from the Section, they should inform the RC and Ward Manager immediately.

**12.3** The chair must also confirm at the hearing who will be conveying the outcome of the hearing to the patient.

## **13. Completion of documentation**

**13.1** The Panel should complete the decision form and return to the Mental Health Legislation Administrator.

**13.2** If the hearing is being conducted via video conference, then it should be completed on a shared screen for all panel members to agree and have input into.

**13.3** All panel members should agree the content of the of the decision form; read the decision form once completed; and ensure they are agreed it is completed fully and correct before they sign it.

**13.4** The back page of the form is for confidential information not to be filed in the patient's Care Record / RiO. The chair must indicate whether the information is for the RC or the Head of Mental Health Legislation to pursue by deleting as appropriate at the top of the form.

**13.5** If the hearing is a video hearing, the chair must email the completed decision form to the MHL Administrator.

## **14. Confidentiality**

**14.1** Lay Manager Hearings are expected to conform to the general rule of confidentiality of patient information. It may be necessary to share information with other people, if issues that arise in a hearing need further action.

- 14.2** Patients should always be offered the opportunity of speaking to the panel alone, with or without their representative unless following advice by the medical staff, it is considered unsafe to do so.
- 14.3 All panel members must delete all papers and emails pertaining to the hearing once completed**
- 14.4 Any notes taken during a Lay Manager hearing must be handed in to the Mental Health Legislation Administrator at the end of the hearing along with all other documentation. No information from the hearing must be taken away by the Lay Managers.**
- 15. Emergency Provisions**
- 15.1** In case of emergency situations such as a pandemic which will require hearings to be conducted via video conferencing, the appendix to this procedure will apply, although it will be a live document and open to change and update based on current Government guidance at the time of the emergency provision being necessary.



## Guidelines on completing Lay Manager Decision Forms

### PAGE 1

- Chair's checklist
- This to aid as a prompt for conduct of the hearing to ensure standardisation of practice amongst Lay Managers.
- It doesn't have to be ticked, signed or marked as completed
- The form details at the bottom of the page will help inform Lay Managers of the required forms for each section.

### PAGE 2

- Ensure all the patients details are completed, including hearing and section details and reason for the hearing.
- These details are normally completed by the MHA Administrator where possible.
- However, on the occasions where this information hasn't been completed in advance of the hearing, it is the **responsibility of the panel** to ensure that it is completed.
- Complete details of panel membership and attendees at the hearing

### PAGE 3

- Record whether the standards required for the document review are met
- Consideration and discussion of the statutory questions.
- These should form the framework for the panel discussion at the end of the hearing.
- These questions should be ticked for the appropriate section at the END of the hearing when the panel have discussed the case and are satisfied that they have been met.
- The answer to these questions will inform the decision.
- These questions should NOT be ticked during the hearing if the questions are answered by any professionals present.
- They are a reflection of the panel's views, NOT the professionals'.

### PAGE 4

- The reasons for the panel's decision should be formed using the statutory questions on page 3.
- There should be reference to the statutory questions in the recording of the decision.

### PAGE 5

- Panel Review – an opportunity to reflect on the hearing; what went well; any learning; and identified training; constructive peer feedback on chairing / winger style
- Any recommendations, concerns or other issues raised should be documented on this page
- Please ensure you indicate who the information is for, the RC or the Head of Mental Health Legislation

It is important to remember that the decision forms completed by Lay Managers are open to legal challenge. So when **all panel members are signing** the form, they must be satisfied that:

- The form is a true reflection of events; and
- the decision made is accurately reflected and justified by the reasons

All decision forms are copied to the Head of Mental Health Legislation  
All concerns are monitored through the MHL Committee, Board Committee



## **Emergency Procedures for remote Lay Manager hearings (Appeals and Renewals)**

1. Panels will be booked in the usual way by the MHLA.
2. Lay Managers accepting a remote hearing booking are automatically confirming they will be conducting the hearing in an environment which does not breach confidentiality in any way.
3. Where possible / appropriate 2 hearings may be heard in one session (AM or PM)
4. Papers will be emailed to nhs.net accounts of Lay Managers
5. If solicitors require access to patient's records, they should be directed to Head of Care Records, Maria Kane.
6. MHLAs will send out the confirmation for the Lay Manager hearing to Lay Managers in the usual way via email and the panel is expected to put this date in their diary.
7. MHLAs will email the papers for the hearing to the panel 24hrs prior to the hearing to allow for technical hitches and preparation time. This email will also contain the MS Teams invite for the hearing. The panel must accept the invitation to access the link to join the hearing.
8. The MHLA will set up the hearing on Microsoft Teams and invite all participants as guests to the hearing at the point of confirming the date.
9. The hearing times will be convened in the same way as usual e.g. 10am for 10.30am start to allow the panel the usual ½ hour reading and discussion time.
10. As no professionals or patients are attend a physical hearing, clinicians providing the reports will be asked to confirm with the MHLA whether they plan to attend the hearing via Teams and whether the patient will be attending – via Teams or phone.
11. The MHLA will inform the panel at the start of the hearing (10am / 2pm) who is planning to attend) and how.
12. If professionals are attending, the panel must hear their evidence as they would in a face to face hearing. A decision without hearing evidence can only be made if no professionals attend the MS Teams hearing.
13. The Chair of the panel will be decided in the usual way.
14. The usual decision making process following CoP guidance applies.
15. The Decision form at the end of the hearing will be completed on screen by the Chair and emailed back to the MHLA from their nhs.net account.
16. The MHLA will keep a copy of the email with the decision form.
17. Once the decision form has been submitted to the MHLA, all 3 of the panel members must delete all emails containing the documents pertaining to the hearing and email the MHLA to confirm they have done this
18. The submission email will act in place of a signature if no electronic signature is available.
19. These procedures will remain in place during the COVID19 period and are liable to change based on government guidance.

20. They will be formally reviewed for continuing suitability at the end of the 2020 calendar year.

**RECORD OF LAY MANAGERS' HEARING**

Patient's name:

NHS No:

<b>Outline for Conduct of Review</b>
1. Chair & panel members to be introduced to patient
2. Determine if patient is to be accompanied or represented
3. Introductions of all present or involved
4. Explain purpose of hearing
5. Ask patient: <ul style="list-style-type: none"> <li>• If they wish to speak to panel privately at the start and/or end of the hearing; and</li> <li>• If they wish to be present throughout the interviews with medical and other staff</li> <li>• If they wish a nurse to be present throughout</li> </ul>
7. Chair to outline procedures and conduct of hearing to all involved
8. Patient or representative states why they wish to be discharged
9. RC report discussed with attending doctor
10. Nursing report discussed with attending nurse
11. Social circumstances report discussed with social worker or other professional
12. Other reports discussed with author or representative If yes, enter name and profession
13. Panel ask those in attendance to leave the room whilst the panel reach a decision
14. Panel unable to decide or hearing adjourned (Give reason on page 4)
15. Recommendation made known to patient and professionals

<b>Section 2</b> (Up to 28 days' Joint) Detention for Assessment)	Forms -	1 Application (Form A1 or A2) 2 Medical Recommendations (Form A4 or Form A3 if 1 Record of Receipt (Form H3)
<b>Section 3</b> (Up to 6 months' Joint) Detention for Treatment)	Forms -	1 Application (Form A5 or A6) 2 Medical Recommendations (Form A8 or Form A7 if 1 Record of Receipt (Form H3)
<b>S3 Renewal</b>	Forms -	1 Renewal of authority for detention (Form H5)
<b>CTO</b>	Forms -	1 Community Treatment Order (Form CTO 1)
<b>CTO Extension</b>	Forms -	1 Report extending the CTO (Form CTO 7)
<b>Section 4</b> (Up to 72 hours Emergency admission for Assessment – Converted to Section 2 by addition of another Medical Recommendation)	Forms -	1 Application (Form A9 or A10) 1 Medical Recommendation (Form A11) 1 record of Receipt (Form H3)

**NOTE:** *If a patient has transferred to our service, the above forms are required plus  
1 Authority for Transfer (Form H4)*

Patient Details		
<b>Name:</b>	<b>D.O.B</b>	<b>SECTION:</b>
<b>NHS Number:</b>	<b>RiO Number:</b>	
<b>VENUE OF HEARING:</b>		
<b>DATE OF HEARING:</b>		
<b>SECTION END DATE:</b>	<b>CTO START DATE:</b>	
<b>DATE OF LAST TRIBUNAL:</b>		
Reason for Hearing: <i>[delete as appropriate]</i>		
<ul style="list-style-type: none"> <li>• RC Renewal / Extension (CTO) (delete as appropriate)</li> <li>• If the patient is contesting please state reasons if known:</li> </ul>		
<ul style="list-style-type: none"> <li>• Patient Appeal Please state reasons for the appeal if known</li> </ul>		
<ul style="list-style-type: none"> <li>• Full hearing following a Consideration Hearing</li> </ul>		
Panel Membership		
<b>Chair:</b>		
<b>Second member:</b>		
<b>Third Member:</b>		
<b>Observer:</b>		
Professionals and Others Present		
<b>Title</b>	<b>Name &amp; Job Title</b>	<b>Attended</b>
Patient		
RC or doctor deputising		
AMHP (or Social Worker)		
Named Nurse		
Care Co-ordinator		
Patient's Legal Representative		
IMHA		

Patient's name:

NHS No:

Documentation Review			
Standard Required	Yes (tick)	Date of Report	Written within 4 weeks of the Hearing?
1. Detention documents present and correct <i>[If not, notify MHLA immediately]</i>			
2. Medical Report			
3. Social Circumstance Report (SCR)			
4. Nursing Report (in-patient)			
5. S132 Rights RiO form			

Conditions Necessary To Satisfy Continuing Detention		
The Lay Managers are satisfied on the evidence that the patient:		
<b>SECTION 2 OR 4 (CoP 38.16)</b>	<b>YES</b>	<b>NO</b>
<ul style="list-style-type: none"> <li>Is the patient still suffering from mental disorder? If so</li> <li>Is the disorder of a nature or degree, which warrants the continued detention of the patient in hospital?</li> <li>Ought the detention to continue in the interests of the patient's health safety or for the protection of other people?</li> </ul>	<input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>	<input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>
<b>OTHER DETAINED PATIENTS (CoP 38.17)</b>		
<ul style="list-style-type: none"> <li>Is the patient still suffering from mental disorder? If so</li> <li>Is the disorder of a nature or degree, which makes treatment in hospital appropriate?</li> <li>Is continued detention for medical treatment necessary for the patient's health or safety or for the protection of other people?</li> <li>Is appropriate medical treatment available for the patient?</li> </ul>	<input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>	<input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>
Consideration has been given to whether the MCA can be used to treat the patient safely & effectively		
<b>CTO PATIENTS (CoP 38.18)</b>		
<ul style="list-style-type: none"> <li>Is the patient still suffering from mental disorder? If so</li> <li>Is the disorder of a nature or degree, which makes it appropriate for the patient to receive medical treatment?</li> <li>Is it necessary in the interests of the patient's health or safety or for the protection of other people that the patient should receive such treatment?</li> <li>Is it still necessary for the Responsible Clinician to be able to exercise the power to recall the patient to hospital, if that is needed?</li> <li>Is appropriate medical treatment available for the patient?</li> </ul>	<input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>	<input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>

Patient's name:

NHS No:

**PANEL DECISION**

Following the Lay Managers' review of the patient's detention, the panel's decision is:-  
*[delete all that do not apply]*

- (a) To discharge patient from the Section under which they are currently detained
- (b) Not to discharge
- (c) To adjourn for further advice
- (d) To postpone – give reason
- (e) Recommend discharge to the MoJ

**Reason For Decision**

**PLEASE ENSURE THE STATUTORY QUESTIONS ARE ANSWERED IN YOUR REASONS FOR DECISION AND CONSIDERATION OF RECENT TRIBUNAL DECISIONS WHERE APPROPRIATE AND USE OF MCA.**

Signed: (1) \_\_\_\_\_ (Chair) Name: .....

(2) \_\_\_\_\_ Name: .....

(3) \_\_\_\_\_ Name: .....

Date: \_\_\_\_\_

**Communication of Decision to the Patient**

**If a patient is attending a remote hearing please check whether they wish to return to hear decision from the panel or if they are content for decision to be communicated by one of the people listed below**

By: RC/Nurse/Care Co-ordinator/MHL Administrator (delete as appropriate)

Name

Signed (Chair)

Date

Time

Circulation List: The Patient and their Legal Representative (if applicable); RiO; Head of Mental Health Legislation

Patient's name:

NHS No:

Panel Review – This is not to be written but used as a prompt tool for review / reflection

What went well? Chair? Wingers?

What could have been different - any learning?

**CONFIDENTIAL**

**Panel's Concerns for the RC / Head of Mental Health Legislation consideration**  
**(please specify)**

***Not to be shared with the patient: Pass to MHL Administrator for action***

Patient's Name:

Hearing held on:

Signed: .....Chair of Lay Manager's Panel

Name: ..... Date:.....

*[Block capitals please]*

Updated AUGUST 2020: L McLanachan & J Prior

## RECORD OF LAY MANAGERS' CONSIDERATION OF A BARRING ORDER FOR s25 NEAREST RELATIVE ORDER FOR DISCHARGE

Chair's Checklist for Conduct of Consideration Hearing	
<ul style="list-style-type: none"> <li>Independent review of the Nearest Relative (NR) order for Discharge and the RC decision to bar</li> <li>To consider the written Order for Discharge by the NR</li> <li>To consider the Barring Order by the RC in relation to the NR request for discharge</li> <li>To consider other information made available via the care record (e.g. risk assessment, care plan)</li> </ul>	
<p>Consideration of an RC's barring order</p> <p><i>NOTE:</i></p> <ul style="list-style-type: none"> <li>i) 1 Report barring discharge by nearest relative (Form M2) (If a patient has transferred to our service, the above forms plus 1 Authority for Transfer (Form H4))</li> <li>ii) Nearest Relative letter requesting discharge</li> </ul>	

Patient Details	
<b>Name:</b>	<b>Section:</b>
<b>NHS Number:</b>	<b>RiO Number:</b>
<b>Date of Hearing:</b>	<b>Venue of Hearing:</b>
<b>Date Order for Discharge Received:</b>	<b>Date Order for Discharge was barred by RC:</b>
<b>Date of Last Tribunal:</b>	
Nearest Relative's Reasons for Ordering Discharge	
Panel membership	
<b>Chair:</b>	
<b>Second member:</b>	
<b>Third Member:</b>	



Patient's name:

NHS No:

Documentation Review	
Standard Required	Yes (tick)
6. Detention documents present and correct <i>[If not, notify MHAA immediately]</i>	
7. NR written order for discharge from detention	
8. Form M2 – RC Barring Order	
9. Risk Assessment	
10. Patient's care record / care plan	

Conditions Necessary To Satisfy Continuing Detention		
The Lay Managers are satisfied on the evidence that the patient:		
<b><u>SECTION 2 (CoP 38.16)</u></b>	<b>YES</b>	<b>NO</b>
<ul style="list-style-type: none"> <li>• Is the patient still suffering from mental disorder? If so</li> <li>• Is the disorder of a nature or degree, which warrants the continued detention of the patient in hospital?</li> <li>• Ought the detention to continue in the interests of the patient's health safety or for the protection of other people?</li> </ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b><u>SECTION 3 (CoP 38.17)</u></b>		
<ul style="list-style-type: none"> <li>• Is the patient still suffering from mental disorder? If so</li> <li>• Is the disorder of a nature or degree, which makes treatment in hospital appropriate?</li> <li>• Is continued detention for medical treatment necessary for the patient's health or safety or for the protection of other people?</li> <li>•</li> <li>• Is appropriate medical treatment available for the patient?</li> <li>• Has consideration been given to whether the MCA can be used to treat the patient safely and effectively?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>  <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>  <input type="checkbox"/> <input type="checkbox"/>
<b><u>CTO PATIENTS (CoP 38.18)</u></b>		
<ul style="list-style-type: none"> <li>• Is the patient still suffering from mental disorder? If so</li> <li>• Is the disorder of a nature or degree, which makes it appropriate for the patient to receive medical treatment?</li> <li>• Is it necessary in the interests of the patient's health or safety or for the protection of other people that the patient should receive such treatment?</li> <li>• Is it still necessary for the RC to be able to exercise the power to recall the patient to hospital, if that is needed?</li> <li>• Is appropriate medical treatment available for the patient?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>AND IN ADDITION:</b>		
<b><u>RC BARRING ORDER, SECTION 25</u></b>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Would the patient, if discharged, be likely to act in a manner that is <b>dangerous</b> to other people or to themselves?</li> </ul>		

Patient's name:

NHS No:

**Recommendation Of Panel**

Following the Lay Managers' consideration of the Barring Order made by the RC in relation to the Nearest Relative's order for discharge from detention, the panel's decision is:-

*[delete all that do not apply]*

- (f) To uphold the request of the Nearest Relative Order for discharge from the Section
- (g) To agree the Barring Order and not discharge from detention
- (h) To hold a formal Lay Manager hearing to further clarify

**Reason For Decision of the Consideration**

**PLEASE ENSURE THE STATUTORY QUESTIONS ARE ANSWERED IN YOUR REASONS FOR RECOMMENDATIONS AND ANY CONSIDERATIONS OF RECENT TRIBUNAL DECISIONS WHERE APPROPRIATE**

Signed:- (1) ..... (Chair) Name: .....

(2) ..... Name: .....

(3) ..... Name: .....

Dated: .....

**Decision communicated to the MHL Administrator**

Chair or Panel Member

Signed : ..... Date: .....

Name: ..... At: .....

*[Block capitals please]* *[Time]*

Circulation List: Nearest Relative; The Patient and their Legal Representative (if applicable); RIO; Head of MH Legislation

Patient's name: ..... NHS No: .....

**CONFIDENTIAL**

**Panel's concerns for the RC / Head of Mental Health Legislation consideration (please specify)**

***Not to be shared with the patient: Pass to MHL Administrator for action***

Patient Name:  
Hearing Held on:

Signed: ..... Chair of Lay Manager's Panel

Name: ..... Date: .....

*[Block capitals please]*

Update August 2020 Appendix 2 Lay Manager Procedures MHL01 M

## Section 132 Procedures

### A. What:

1. Section 132 of the Mental Health Act (MHA) provides a duty for managers of hospitals to give information to detained patients about their legal position and rights under the MHA.
2. Section 132A provides the same expectation for patients on a Community Treatment Order (CTO). For the purpose of these procedures, the reference s132 will be used, but aims to include CTO patients unless otherwise stated.
3. The Trust has standard s132 and s132A checklists available for all sections including one for Informal Patients which must be used when informing patients of their rights.
4. The MHA Code of Practice (CoP) dictates certain occasions when patients must be informed / reminded of their rights under the MHA:
  - At the start of detention
  - The patient is considering, or is eligible to apply to the Tribunal
  - The patient requests that Lay Managers consider discharging them or this request is refused
  - Rules authorising treatment have changed (end of 3 month rule; regained capacity to consent)
  - Any significant change in treatment is being considered
  - CPA Review
  - On consideration of renewal or extension of detention
  - On actual renewal or extension of detention
  - The patient has been recalled from CTO or CTO is revoked whilst on your ward
  - The patient has been recalled from Conditional Discharge to the ward
5. When then patient is discharged from detention or CTO, they must be informed with an explanation of what happens next, including any section 117 aftercare or other services which are to be provided
6. Wherever possible and wherever the patient has not objected, the Nearest Relative should be given a copy of any information given to the patient.

### B. Who:

1. Although anyone can give patients their rights whenever they require it, the Trust would expect rights under s132 to be given by a qualified nurse or other qualified professional.

### C. How:

1. When informing patients of their rights, the standard Trust checklists (Appendix 1) must be used. This will ensure there is no variation on information given and that it is appropriate to both the section of the MHA and the stage at which they are detained e.g. 2<sup>nd</sup> 6monthly renewal may have different appeal rights than at the start of

detention. These checklists are prompts for the staff advising of rights, but can also be given as a reference to the patient if they require a copy.

2. A hard copy of the checklists should be available on all wards / team bases. Copies may be obtained through the Trust intranet page.
3. It is important to remember that informing patients of their rights should be about empowering the patient. With this in mind, it not appropriate to force a patient to sit and listen to rights being read because an occasion has arisen identified by the code of practice. If the patient refuses or doesn't want their rights for any reason, please ensure this is fully recorded on the s132 register of attempts.

#### **D. Recording:**

1. Every time an attempt is made to read patients their rights, this must be recorded on the Register of Attempts form on RiO.
2. The purpose of the form is to ensure the following information is captured for audit and inspection purposes:
  - Date
  - Section of MHA
  - Reason for giving rights (CoP defined as in Section A of this document)
  - Has an IMHA referral been made
  - Does the patient require their Nearest Relative to receive information leaflet
  - The outcome (for example accepted / refused / lacked capacity)
  - Whether the patient kept a copy of the checklist
3. Copies of the checklists do not need to be copied / scanned / uploaded to RiO. The Register of Attempts form is the record.

#### **E. Reporting**

1. S132 will continue to be reported on a quarterly basis as part of the MHA audits.
2. An exception report of any results below 100% compliance are sent to the Chair of Mental Health Legislation Committee (MHLC), Board subcommittee with a formal MHL compliance report sent to the MHLC quarterly
3. This report is also circulated to Associate Directors (ADs) and Clinical Directors (CDs) for information and action where appropriate.

## **STANDARD OPERATING PROCEDURE FOR MAINTENANCE OF SECTION 12/AC APPROVAL RECORDS AND APPRAISAL OF PRACTITIONERS APPROVED UNDER THE MENTAL HEALTH ACT 1983**

### **1. Introduction**

- 1.1 All work carried out under the Mental Health Act 1983 (amended 2007) by a practitioner must have appropriate approval otherwise it remains unlawful. This undermines patient care and it may result in substantial damages being awarded for unlawful treatment or detention. It also calls into question practitioners' fitness to Practice and causes serious reputational damage both to the practitioners and to the employing organisation.

### **2. Responsibilities**

- 2.1 It is primarily the practitioner's responsibility to ensure that they have the correct approval for the work that they undertake.
- 2.2 It is the employer's responsibility to ensure that practitioners have the correct approval for the work they are employed to do.
- 2.3 Appraisals should cover all aspects of a practitioners work, including Mental Health Act duties with documentary evidence, such as approvals letters, checked against practice needs.

### **3. BSMHFT's primary responsibility with regard to practitioners approval under Section 12(2) of the Mental Health Act and Approved Clinician status**

- 3.1 BSMHFT will audit the approval status of all practitioners it employs and ensure that they have approval for the work that they undertake against the database approved by the Approvals Panel/the practitioner's approval letter.
- 3.2 BSMHFT's nominated person to work closely with the approvals administration team for the Midlands and East of England Approvals Panel would be the Chief Mental Health Legislation Officer (with delegated responsibility to the Chief Mental Health Legislation Officers' secretary/administrator (Sam Takesha currently, emergency cover by Barbara jones ) for day to day administrative purposes), to check the approval status of practitioner that BSMHFT employs and to keep a record of the expiry dates of such approvals so they can work with the approvals administration team to encourage practitioners to apply for renewal in a timely manner and undertake relevant courses (though the responsibility for maintaining the approval rests with the practitioner themselves).
- 3.3 The doctor should make available their approval status document to appraisers enabling them to check their approval status against Mental Health Act duties at each formal appraisal.

### **4. Process of Continuous auditing and database updating of Section 12 approval and Approved Clinician approval status**

- 4.1 BSMHFT would follow a process of continuous auditing to ensure that all practitioners employed by BSMHFT who carry out Mental Health Act related duties are approved under Section 12(2) of the Mental Health Act and where required act as Approved Clinicians.
- 4.2 The designated medical staffing officer (Kerry Rowley currently for non-trainee doctors and Leonora Johnson for all doctors in higher specialist training ) will provide on a monthly basis an updated list of all doctors working within BSMHFT who work as Higher Specialist Trainees, Associate Specialists, Staff Grade doctors, Trust Grade doctors, Consultant Psychiatrists and those who are employed in locum roles within the aforementioned roles to the Chief Mental Health Legislation Officer (delegated to his secretary currently Takesha Sam). This list will highlight those doctors who have joined the Trust in the above roles in the preceding 30 days together with a list of all doctors.
- 4.3 Only Doctors who hold approved clinician status can undertake on call consultant Role (out of hours RC). Only Section 12 approved doctors can be on the middle grade doctors ROTA. Medical staffing administrator/ Secure care administrator/ Neuropsychiatry ROTA coordinator preparing the Doctors on call rota will receive the monthly updated database and can check against this before setting out the ROTA of On call doctors. It will remain the responsibility of the doctor on call to ensure that they remain an Approved Clinician before undertaking on call consultant (out of hours RC duties) and for a doctor to be section 12 approved before undertaking a middle grade rota on call.
- 4.4 The doctors' on call rotas can also be submitted if there are any new or emergency changes /locums appointed by the person responsible for preparation of the ROTAs for checking against the Section 12/AC data base to the Chief Mental Health Legislation Officer's secretary (Takesha Sam) if the individual does not have access to the data base but it will be the primary responsibility of the individual preparing the ROTA to ensure that doctors on the ROTA are suitably qualified and approved to be on the ROTA. All those preparing on call doctors ROTAS should have access to the Section 12/AC data base and should check against the data base before placing a doctor on the ROTA (i.e. section 12 approved for section 12 approved doctors ROTA and middle grade ROTA; AC approved for consultant on call ROTA).
- 4.5 This submitted list will be checked against the Section 12 approved doctor/Approved Clinician database of the Midlands and East of England Approvals Panel by the Chief Mental Health Legislation Officers' secretary/ Administrator.
- 4.6 Those doctors whose names do not appear within the database would be contacted directly by the Chief Mental Health Legislation Officer's secretary/administrator to clarify their approval status and appropriate documentation would be sought both from the practitioner/doctor and the Midlands and East of England Approvals Panel.
- 4.7 A database of all doctors approved under Section 12 of the Mental Health Act and those also approved as Approved Clinicians with their expiry of approval date would be available and updated on a monthly basis to be accessed by those who need access to such a database, including Medical Staffing, appraisers, line managers, including Clinical Directors and also directly to those doctors approved under the Mental Health Act 1983.
- 4.8 If a doctor is employed by the Trust or is due to be employed by the Trust in a role which may require approval under the Mental Health Act 1983, such as:
  - a) Consultant Psychiatrist in any speciality or speciality of psychiatry,

- b) Associate Specialist,
- c) Staff Grade doctor,
- d) Higher Specialist Trainee

and such a doctor does not have approval under Section 12 of the Mental Health Act, such a doctor would have to justify their ability to carry out all their work as laid out in the Job description without such approval to the Chief Mental Health Legislation Officer in the first instance and if there remains a doubt to a joint review by the Medical Director and the Deputy Medical Director for Workforce on escalation by the Chief Mental Health Legislation Officer.

- 4.9 Within BSMHFT only Consultant Psychiatrists, Locum Consultant Psychiatrists, Associate Specialists, Staff Grade doctors or Higher Specialist Trainees can hold Responsible Clinician responsibilities. All those who take on the responsibility of a Responsible Clinician would need to hold Approved Clinician status.
- 4.10 It would be the responsibility of the Clinical Director of the respective areas supported by the medical work force administrator to ensure by checking across the database made available before employing such a doctor to ensure that they have the requisite approval to be an Approved Clinician. If in doubt they can seek advice from the Chief Mental Health Legislation Officer.
- 4.11 It would be the responsibility of the designated Medical Workforce administrator prior to confirmation of employment of any doctor into the role of a Consultant Psychiatrist/Locum Consultant Psychiatrist to ensure that they hold Approved Clinician status currently approved under the Mental Health Act 1983 by checking the Approved Clinician status on the database.

## **5. Appraisals**

- 5.1 Appraisers to ensure Section 12 approval/Approved Clinician approval database is checked against Mental Health Act duties at each formal appraisal.
- 5.2 At every scheduled annual appraisal the appraisee would need to upload to the appraisal database their Section 12 approval letter from the Midlands and East Approvals Panel/appropriate approvals panel. They would need to confirm to their appraiser their AC approval status is current.
- 5.3 It is not the duty of an Appraiser to cross check the approval status of a doctor but during the appraisal process the appraiser can check Section 12 and Approved Clinician approval database (via the chief Mental Health Legislation Officer's secretary/administrator ) that the appraisee remains currently approved if in doubt.
- 5.4 Appraiser to check against all the duties the appraisee undertakes and consider whether their respective approval status is appropriate.

## **6. Guidance for Appraisers**

- 6.1 Duties that a medical doctor can use approval for:
- 6.2 Giving medical recommendation for compulsory admission of mentally disordered person to hospital or guardianship.



6.3 Giving medical evidence to be taken into account by a court before ordering admission of the patient to hospital or guardianship (Category 2 psychiatric reports for court).

6.4 All Responsible Clinicians should be Approved Clinicians, Responsible Clinicians can:

1. Be clinical lead for a patient liable to be detained or on a CTO guardianship
2. Grant Section 17 leave
3. Review need for detention or guardianship
4. Discharge from detention, CTO or guardianship
5. Decide whether to bar nearest relative discharge from detention or CTO
6. Renew detention CTO or guardianship
7. Recommend transfer for guardianship
8. Make a community treatment order (with approved mental health professional)
9. Recall from CTO
10. Revoke community treatment order (with approved mental health professional)
11. Report to Ministry of Justice on restricted patients

## **7. Powers of an Approved Clinician (not a Responsible Clinician)**

7.1 Approved Clinicians:

1. May be authorised under Section 24 by nearest relative to visit and examine a patient in private.
2. May be authorised for a Tribunal report to visit and examine a patient in private.
3. May be authorised by the CQC to visit and examine a patient in private.

May provide reports to the court in some Part 3 cases.

## Mental Health Review Tribunals and Court Hearings by video

### Introduction

1. Video hearings of Mental health review tribunals (annex1)
2. Video hearings in courts , and within Prisons (annex2)

All legal hearings are now taking place by video link with a single Kinly, cloud video platform online

Over the last 6 weeks, there has been rapid adoption and setting of this video hearing system. It is expected that this system will be in place well into 2021 currently.

There are no face to face tribunal hearings taking place any more

Most criminal, civil and family courts are also now functioning via online attendance by witnesses, defendants and legal representatives.

Annex 1 provides a guide on to how to participate in a Mental Health Review Tribunal online. Annex 2 provides a guide on to how to join a criminal/civil/family court hearing online.

## **Annex 1: Mental Health Review Tribunals by Video**

All Mental Health Review Tribunals will now occur by video in BSMHFT.

**From Monday 8 June 2020 the Mental Health Review Tribunal service are Clerking all Video Hearings virtually with the support of the administration team.** This will enable them to ensure there are no connectivity issues and that the hearing can proceed without any delays.

For all 10:30am hearing's, please join the video room at 10:00am where you will be greeted by a member of the administration team.

For all 2:15pm hearings, please join the video room at 1:45pm where a member of the administration team will greet you.

Should you have any connectivity issues and you are also unable to dial into the telephone number provided for your video room, please email

[MHTAdministration@justice.gov.uk](mailto:MHTAdministration@justice.gov.uk)

and a member of your administration will assist you.

Details of how to join the video Mental Health Review Tribunal hearing:

Please test all your equipment at least 48hrs before a MHRT hearing.

Important Information before use:

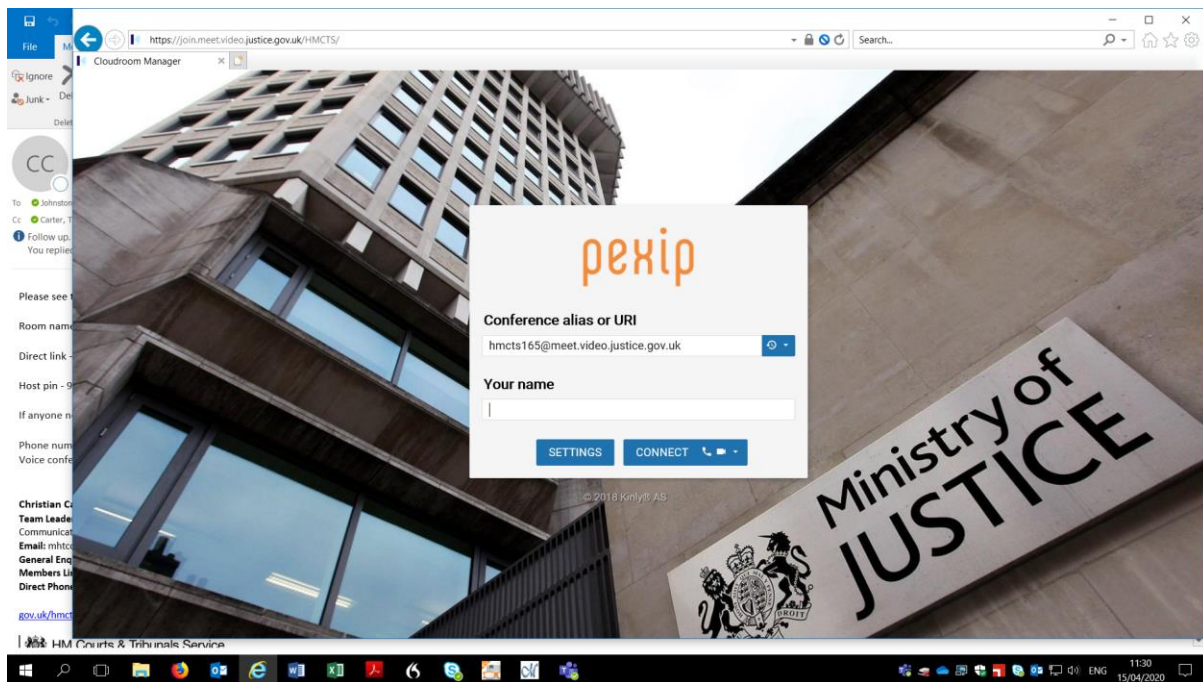
It is vital that you use **Google Chrome**, which is published on your desktop, or laptop



Please copy and paste the link sent to you in the hearing invitation into the Google Chrome browser. If you have any issues with the functionality of the Common Video Platform (CVP) please log out of your Teams or Skype account and try again.

If you are using an **Apple device**, please use the **Safari browser**

The log in page will be similar to the screenshot below



1. You can use any machine – desktop, laptop, mobile phone etc. – but do make sure that it has a working camera and microphone and that they are turned on and the volume is up
2. Copy and paste the invitation link for the hearing room into a web browser. It will be hearing specific and look like the example link below:  
<https://join.meet.video.justice.gov.uk/HMCTS/#/?conference=hmctsXXX@meet.video.justice.gov.uk> into the Google Chrome Browser.
3. On the next screen, the conference details for the hearing you are booked to attend will appear automatically e.g. [hmctsXXX@meet.video.justice.gov.uk](https://join.meet.video.justice.gov.uk/HMCTS/#/?conference=hmctsXXX@meet.video.justice.gov.uk). Please check that this is the correct hearing number by cross-referencing with the invitation details and correct if necessary to avoid joining the wrong hearing.
4. Enter the name by which you wish to join the hearing. See screen shot above.
5. Hover over the “connect” button to check that you have both the video camera and the microphone enabled (top option). Then press connect.
6. On the next screen, you will be asked to select your camera and microphone. Select “default” for both, if you are using the desktops /laptops camera, microphone, and speakers. Choose appropriate devices from drop down menu if you are using different microphone /camera/or audio then press “start”.
7. On the next screen, you will be asked to enter your role as either host or guest. Choose guest and click “connect”. You will be placed into a waiting room until the Judge (the host) joins the call.
8. If you are unable to join the hearing from your computer, you can join from your telephone by dialing telephone number 02036088838. When prompted for the Voice conference ID, enter the number shown on the hearing invitation e.g. 12345678#. Please note that you must dial **141** before dialing the into the conference to ensure your telephone number remains private and not visible to participants.

For difficulties encountered in the use of the video conferencing system, please contact

Travis Barrett

Technical Services Team

Birmingham & Solihull Mental Health NHS Foundation Trust

Email: [Travis.barrett1@nhs.net](mailto:Travis.barrett1@nhs.net)

Tel: 0121 301 2670

Who will be able to assist and inform your Mental Health Legislation Administrator.

### **Common Connectivity Issues**

Common issues connecting at the outset for both parties and panels are:

- a. the camera and microphone on their device not working.

Solution: (1) the camera and microphone may be 'captured' by another app or browser on their device. This isn't always apparent to the user, because the microphone or camera may not be 'on', but they may still be associated with another app that is running in the background. Tell them to disconnect, close all other browsers on their device and shut down other apps such as WhatsApp, Facetime, Zoom etc. which may be using the camera and microphone in the background and rejoin, if possible, remaining in phone contact with VHS.

In the first 'landing' window which sets out the conference code and requests their name, select the blue "Settings" button under "your name";

Change the camera and microphone settings to 'default';

Grant permission for the browser to use the camera and microphone if the request box appears by clicking "Allow".

Click OK;

Select the blue "Connect" button;

In the next window, select Role as "Guest" and Connect;

(2) If the device used is an iPad, check whether Google Chrome has been downloaded and used to try to connect. If so, this may be the source of the problem and the user advised to try to connect using Safari on an iPad.

(3) If the user is already in the video hearing room and can see the controls, they can change the microphone by selecting the cog on the top of the volume control and change the camera by selecting another camera from the 'change camera' button at the bottom right hand of the screen.

- b. There is a time lag between the user's picture and sound so that the voice is not in sync with the lips or their picture may have frozen completely.

Solution: This may be because they are using Microsoft Edge or Explorer as their browser rather than the preferred Google Chrome on a windows device. If there is a lag between video and audio, this can often be helped by reducing the bandwidth of their picture. Ask them to disconnect and on the first MOJ 'landing page', click the left-hand blue button 'settings'. Scroll to the bottom of the page to the heading "Bandwidth". Change the bandwidth setting by clicking on the arrow on the right hand side and set to 'low'. Then click OK then click Connect.

Select role as Guest and click Connect again.

- c. User can see the hearing room, side bar and chat room but not the participants:

Solution: They may be using a device with a firewall preventing them from accessing the camera and microphone. Try solution (a)(1) above and if this does not resolve the issue, suggest that they use another device or smartphone to join instead of a laptop or PC.

- d. The participant has joined and can see and be seen but has no audio:

Solution: the microphone may be muted on the laptop/device or muted in the room. VHS should check that the host has not muted all guests, nor the individual participant. Again, ask if they have other apps open on their laptop, tablet or smartphone that might have 'captured' the microphone and suggest they close all other apps, if possible. Check if the user has recently used Skype for Business and if so, ask them to shut Skype down completely as it is often the culprit. Reconnect as set out in solution (a) (1) above.

- e. The participant has joined and can be seen and heard, but cannot hear:

Solution: the speaker on the laptop or device may be muted or the participant may have muted the speaker in the hearing room.

- f. Issues with the picture or audio cannot be resolved on the user's device and an alternative device is available for video only or audio only.

Solution: Any participant can join using more than one device so that if there are issues with a camera on a laptop but not the audio, or the audio on a laptop but not the camera, the same person can join by mobile phone to utilise the camera or microphone, but must ensure that all the audio is muted on the second device to avoid significant and disruptive feedback in the hearing room.

- g. The quality of the sound is poor and it is difficult to understand what the user is saying

Solution: The poor audio may be because of a poor microphone on a particular device. Using headphones and microphone even from a mobile phone or a laptop will improve the quality of both the microphone and the audio. Ask participants to speak clearly and close to the microphone if there are audibility issues.

- h. If using a mobile phone, it is possible to download a free app called Pexip Infinity Connect, which enables ease of joining. This may be an option more suitable for frequent users. Alternatively, simply copy the address e.g. <https://join.meet.video.justice.gov.uk> into the internet browser on the phone or tablet and go. Then enter the conference alias e.g. hmcts111@meet.video.justice.gov.uk.

## **Annex 2: Video based Hearings in Crown and Magistrates Courts**

HMCTS is rolling out video conferencing technology to all Crown Courts in England and Wales to enable some criminal hearings to be held by video. The cloud video platform (CVP) system connects securely to the existing justice video network, which links police stations and prisons to courts. It is accessible by any internet-enabled device with a camera and a microphone.

CVP is also being rolled out to magistrates' courts, and to civil and family courts. The west midlands courts will shift to the CVP system in June 2020.

Instructions on how to join a cloud CVP hearing has been published

<https://www.gov.uk/government/publications/how-to-join-a-cloud-video-platform-cvp-hearing/how-to-join-cloud-video-platform-cvp-for-a-video-hearing>

### **Overview**

All video enabled criminal hearings will be hosted using Cloud Video Platform (CVP), which allows participants to appear in court remotely by video link using laptops, tablets, and other internet enabled devices. Video enabled hearings are being held to enable courts to continue functioning during the coronavirus outbreak.

The defendant is assessed in police custody for suitability to take part in a video hearing. The court will then make directions in relation to any future hearings, should the defendant remain in custody. It is likely that a video hearing will be the more appropriate method of dealing with a defendant, but this is always subject to judicial discretion.

Courts will make a live link direction at the start of the day. Judicial discretion to rescind a live link direction is not affected by the emergency legislation.

Members of the public can still attend the physical courtroom but they must observe social distancing rules.

Open justice is a fundamental principle in our courts and tribunals system. Requests from the media and others to observe a hearing remotely should be made to the court in advance to allow for inclusion during the hearing set-up. Please contact the court. This is not available for criminal jury trials in the Crown court.

### **Before the hearing**

#### **Listing**

Listing of court hearings is a judicial function and the judiciary will have agreed the local listing arrangement. Consideration will be given to priority listing for the following categories:

- hearings with time limits that are about to expire
- vulnerable defendants including youths
- defendants on remand, awaiting sentence

Courts will consider specific requests and accommodate these where possible in consultation with other agencies and the judiciary, according to priority.

#### **Defence practitioner's responsibilities for video remand hearings (defendant in police custody)**

The court will have a nominated email address for Court Video Platform work. They expect solicitors, including the allocated court duty solicitor, to email the court via this address by 8am to provide:

- their name and the name of the defendant they are representing
- their full contact details (including a direct telephone/mobile number)

Currently, the default position is that attending court in person would only take place in exceptional circumstances. Please contact the court by email if this is something you would like to discuss.

#### **Speaking with clients in a police station**

Legal teams will be given time prior to the hearing to consult with their client: this will need to be a telephone call with the custody suite.

The Court Video Operator will share Solicitors details with the police custody suite who will then contact them directly to arrange for them to have consultation by telephone.

### **Attending court as the duty solicitor for overnight custody cases**

Solicitors can attend by video link like any other participant. Once they have introduced themselves to the nominated Court Video Platform mailbox, you will receive a link and instructions by email.

Where clients are in court custody suites with interview rooms that have toughened glass partitions, defence representatives can also choose to attend physically to discuss legal matters with them.

The Court Custody Manager will control visitor numbers to ensure that social distancing guidelines can be met.

### **Defendant consultation in a prison**

The prison will assume responsibility for booking non-court hearing bookings for probation, defence practitioners and parole board with defendants in prison.

Where a defendant is unrepresented and on bail, their contact details will be masked by sending the invitation BC (blind copy).

### **During the hearing**

In confidence discussions during the hearing

Please take full instructions from your client before the hearing. On the rare occasion that it is necessary to take further instructions, the hearing will be suspended while you talk to your client in private.

### **Talking in private to a prosecutor**

HMCTS will make sure you have the Crown Prosecution Service prosecutor's phone number or email. If you want to talk to them privately before the hearing you can call them. Make sure both your connections to the video hearing are on mute if your discussion with Crown Prosecution Service is confidential.

### **Clients who need an interpreter**

In a magistrates' court, the interpreter will be booked by the police. In a Crown court, the interpreter will be booked by HMCTS. The expectation is that the interpreter will appear by video, but may attend the police custody suite or court building. HMCTS will receive email notification that a booking with translation services has been made. The Court Video Operator will send the interpreter details on how to join the hearing.

### **Sharing case materials**

Normal processes will continue unless this is not possible: in magistrates' courts, case materials are sent to relevant participants by secure email. In Crown courts, they are available in DCS.

During the hearing, documents can be shared on screen. Users cannot share documents through Apple's Safari browser. You will need to use another web browser such as Google Chrome. When you share documents, make sure that these are clean copies and do not have any annotations.





## Appendix 7

### **Birmingham and Solihull Mental Health NHS Foundation Trust and Birmingham City Council Joint Guidance for Medical Examination of Patients (During the COVID 19 Pandemic) for detention Under the Mental health act 1983.**

#### **1. Introduction**

This Guidance has been originally jointly agreed between Birmingham City Council (AMHP Services) and Birmingham and Solihull Mental Health Foundation Trust, enabling Doctors to use Video technology for Medical examinations only when necessary. This has been updated in light of updated guidance from NHSE/I and DHSC<sup>1</sup>.

This Guidance applies to All Doctors working for BSMHFT and All AMHPS working in Birmingham and Solihull.

Schedule 8 of the Coronavirus Act 2020 is not yet in force.

S.12(1) of the Mental Health Act of 1983, amended 2007 notes

*12.—(1) The recommendations required for the purpose of an application for the admission of a patient under this Part of this Act [or a guardianship application][1] (in this Act referred to as "medical recommendations") shall be signed on or before the date of the application, and shall be given by practitioners who have personally examined the patient either together or separately, but where they have examined the patient separately not more than five days must have elapsed between the days on which the separate examinations took place*

The Mental health Act Code of Practice 2015 requires that a medical examination as part of a Mental Health Act assessment must involve:

- direct personal examination of the patient and their mental state, and
- consideration of all available relevant clinical information, including that in the possession of others, professional or non-professional.

There may be a challenge during the Covid19 Pandemic under some exceptional circumstances to carry out a direct personal examination in person face to face. E.g. the patient is isolating at home with COVID9 or is shielding at home under the UK Government guidelines due to ultra-high risk status and does not wish to have a in person examination or, examination would involve travelling very long distances.

Detention under the Mental Health Act can potentially be a serious infringement of the patient's basic human right to liberty therefore any medical examination needs to be a full examination and as comprehensive as practicable under the circumstances.

There is precedence for using video technology to carryout Mental Health Act assessments in the UK (Orkney) and other part of the world (Australia).

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<sup>1</sup> Legal guidance for mental health, learning disability and autism, and specialised commissioning services supporting people of all ages during the coronavirus pandemic 19 May 2020, Version 2

This guidance has been drafted in line with page 112 of the MHA Manual (Jones) and also the guidance released by the Royal College of Psychiatrists on use of video technology in medical examination.

Jones Mental Health Act Manual (22nd edition page 112 ) concludes “ there would appear to be no reason to prevent the examination to be conducted via a video link “

## **2. During the current pandemic The Royal college of Psychiatrists has issued guidance on conducting video consultations <sup>2</sup>**

*‘During the COVID-19 pandemic, remote consultations should be encouraged where safe and appropriate to avoid unnecessary travel and face-to-face contact. Though ideally remote consultation should be an adjunct to, rather than substitute for, face-to-face consultation, this may not be possible in the current climate. For initial consultations (where the patient and clinician are unknown to each other), remote consultations may be even more challenging. Despite this, the alternative of no consultation at all is not preferable and we recommend that initial remote consultations go ahead where possible’*

## **3. Considerations for Mental Health Act Assessments by video during COVID-19**

It is the opinion of NHSE/I and DHSC that developments in digital technology are now such that staff may be satisfied on the basis of video assessments that they have personally seen or examined in a “suitable manner”.

### **3.1 Assessment in Person**

- Even during COVID-19 period it is always preferable to carry out a Mental Health Act assessment in person.
- Under specific circumstances where this cannot happen, it is possible to conduct a video assessment.
- Decisions should be made on a case by case basis and process must ensure that a high quality assessment occurs regardless of channel.

### **3.2 Video Assessments**

**Video assessments can be considered if all three below criteria are met:**

1. There is significant risk of harm via transmission of Coronavirus to the person and/or staff;
2. There is significant risk of harm due to the delay of assessment and/or subsequent intervention
3. The minimum quality standards; and safeguards are met to ensure that a meaningful and high quality assessment can occur in a safe environment. (Use check list in Annex 1 to determine this)

(For a video assessment to occur all the above three criteria have to be met).

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<sup>2</sup> <https://www.rcpsych.ac.uk/about-us/responding-to-covid-19/responding-to-covid-19-guidance-for-clinicians/digital-covid-19-guidance-for-clinicians>

Processes should be in place to ensure focus on service user needs, support for staff, and accountability for the system:

- wherever possible make a joint decision and an agreement on the use of video assessments, taking into account the person's views.
- Staff should be confident of their competence, training (and support) to facilitate a video assessment that meets the MHA requirements. This includes awareness of any biases.
- Staff should ensure:
  - the person is not adversely impacted by the use of video assessments
  - there is adequate visual and audio access
  - the person's communication needs are met
  - the assessment must not be recorded.
- A pre-determined contingency plan should be agreed before the video assessment commences.
- Local processes feeding into the national process to monitor the quality of the MHA and to inform continuous improvement:
  - Clear, auditable and timely documentation on RIO
  - reflection of process for both staff and service users

Decisions should be guided by the assessment team with the fundamental question being if the method proposed can ensure that a high quality assessment can occur in a suitable manner.

In order for a video assessment to be considered, there must be robust digital technology in place and a suitable environment that can enable a high-quality personal assessment to be conducted.

To ensure this, the following minimum standards should be met:

- Body language and facial expressions of the person being assessed, and staff should be accurately observed
- A consistent connection must be maintained that allows uninterrupted video and audio streams.

To ensure this:

- Technology and equipment should be tested in advance of the assessment starting, for example by checking the Broadband speed or by streaming a short video.
- A calm, professionally appropriate environment should be maintained which is free from distractions, interruptions, or unnecessary people.

- Technology must be secure and patient confidentiality should be maintained throughout. It is recommended that the assessment must not be recorded.
- Technological and environmental standards should be considered by the assessors and should be satisfactory

The choice of specific video conferencing platform is left to the discretion of assessing team though Microsoft Teams is the preferred choice in BSMHFT.

Community: Difficult for minimum standards to be met. Where they can, the AMHP and at least one S12 doctor should attend the assessment in person, and in exceptional circumstances, the second doctor may join by video.

Place of Safety or Mental Health hospital: It is the requirement that at least one mental health trained professional must attend the assessment in person.

Part III: NHSE/I and HMPPS encourage greater use of digital technology in prison settings - see new Guidance on Prison (this has already been adapted by BSMHFT).

### **3.3 Reasonable safeguards should be applied to CYP, LD&A and older adults:**

- ✓ Take time to understand specific communication and support needs of the person being assessed
- ✓ Involve the contributions of “knowledgeable informants” or members of staff with specialist experience or expertise
- ✓ Be aware of heightened risks of inequalities or risk of inappropriate detention that may be exaggerated e.g. diagnostic overshadowing
- ✓ Be aware that populations may be at heightened risk of digital exclusion and may not be confident or require additional support

### **3.4 Prison Mental Health Assessments should take place as required<sup>3</sup>:**

Where there are restrictions in place for face-to-face contact due to COVID-19 or capacity issues in relation to staffing, meetings/clinical discussions/assessments must still take place. However, the ways in which this is carried out needs to be through the use of digital technology (e.g. videoconferencing, confidential Skype) or through telephone calls. No matter how, the assessment must take place.

All mental health inpatient services, mental health prison services and the prisons must ensure that they have the appropriate technology, governance, policies and procedures in place to support the use of digital technology.

If a face-to-face assessment is possible, personal protective equipment (PPE) will need to be worn in line with national guidance.

Eclipse completion: Every time a video Mental Health Act assessment occurs via video consultation an eclipse under Mental Health Legislation should be completed by the assessing doctor enabling monitoring, mitigation and recording of such practise

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<sup>3</sup> Prison transfers and remissions to and from mental health inpatient hospitals in relation to COVID-19 28 April 2020, Version 1

Author: Dr Dinesh Maganty, Chief Mental Health Legislation Officer BSMHFT

Legal advice provided by: Safia Khan, Head of Legal Department, BSMHFT

19/5/2020

**Annex 1.****Checklist to support decision in line with the minimum standards and safeguards on the application of technology to the Mental Health Act assessments**

Where multiple no's are records ensure mitigation steps

<b>Minimising adverse impacts of conducting Mental Health Act assessments by video and alternatives such as personal protective equipment</b>		
Have you taken into account physical and psychological risk to the service user?	Yes	No
Have you taken into account physical risks to the clinician/AMHP?	Yes	No
Have you taken into account physical and psychological risks to the carer?	Yes	No
Please record the preferences of the service user regarding a clinician/AMHP wearing PPE and/or use of video	Yes	No
<b>Person centred and inclusive</b>		
Have you shared detailed instructions and information prior to explaining how the assessment will be carried out using video?	Yes	No
Have you given the opportunity to address any concerns raised? Please record the concerns raised.	Yes	No
Have you considered the communication needs of the service user?	Yes	No
Can sufficient reasonable adjustments be made to ensure an equitable experience?	Yes	No
Have you attempted to make a shared decision with the service user that a video assessment is the best options in the circumstances?	Yes	No
Have you offered the person time after the assessment to discuss the experience with an appropriate member of staff?	Yes	No
<b>Quality of the Mental Health Act assessment</b>		
Have you tested the equipment and internet connection to ensure high quality of sound and video transmission before the assessment?	Yes	No
Taking in account availability of technology and your skills, are you confident in your ability to conduct a high quality video assessment, both before the assessment starts and during the assessment?	Yes	No
Do you have adequate access to the information that you need to carry out a high quality assessment, including verbal/non-verbal ques/information from other sources?	Yes	No
Do you have an agreed contingency plan should the video assessment need to be discontinued?	Yes	No
Have you attempted to mitigate any biases that may result from the use of video?	Yes	No
<b>Governance and oversight</b>		
Have you reached a shared clinical judgement made in advance that video		

assessment is satisfactory and appropriate in the clinical circumstances?	Yes	No
Have you informed the service user that the assessment will not be recorded?	Yes	No
Do you have a plan in place to protect the service user's confidentiality and personal data?	Yes	No
Have you clearly documented within the service user's record that a video consultation was used and the reasons and justifications for the decision made?	Yes	No
Is there a mechanism in place in order to receive and monitor structured feedback from staff and service users/carers on their experience of video assessments?	Yes	No
Does your Trust's Board of Directors that hold the legal responsibility for the Trust's actions continue to authorise the use of video Mental Health Act assessments under exceptional circumstances? Example, very high level of staff are absent from work due to COVID	Yes	No
Has your Trust put in place arrangements for video Mental Health Act assessments to be recorded and reported to the Mental Health Act Trust Governance Leads and the Department of Health and Social Care?	Yes	No



## Appendix 8

### Coronavirus: temporary changes to the Mental Health Act

<b>Guideline No &amp; Category</b>	COV 03	COVID-19 Guidance
<b>Version No</b>	4	
<b>Formulated Via</b>	MHA Team	
<b>Ratifying Committee</b>	Legal and Ethics Group	
<b>Date Ratified</b>	March 2020 / Reviewed June 2020 / Reviewed August 2020	
<b>Next Review Date</b>	Incorporated into MHL01 policy (next full review October 2023)	
<b>Guideline Author</b>	Louise McLanachan, Head of Mental Health Legislation and Dinesh Maganty, Chief Officer MH Legal, Deputy Caldicott Guardian	

#### **Why are the government making emergency changes to the Mental Health Act?**

The Mental Health Act must continue to function effectively throughout the Covid-19 pandemic, in order to ensure the safety, care, and treatment of people severely affected by mental illness.

Emergency legislation has been passed by Parliament which includes temporary measures to change the Mental Health Act. This is because the government is concerned that Covid-19 will reduce the number of mental health professionals available to help people whose mental health places them at risk.

**The changes except to tribunals, lay mangers hearings and Second Opinion Appointed Doctors will not apply currently - they may be activated if the crisis worsens.**

#### **What are the changes being made?**

There are number of changes being made. We have put details of these below.

#### **Changes to the number of doctors required to detain you under the Mental Health Act for assessment and treatment**

Usually 3 people have to agree that you need to be detained. These are normally an approved mental health professional (AMHP) and 2 doctors. Under the new legislation, the number of doctors is reduced to 1.

The AMHP and doctor have to record the reason why the decision to detain you was made on the recommendation of only 1 doctor and they should only take this decision if they believe that staff shortages caused by coronavirus mean it would take too long for a second doctor to assess you.



## **Changes to how long you can be remanded to hospital for**

If you are accused of a crime, the court may think that your mental health was a factor in your offence. Under Section 35 and 36 of the Act, the court can send you to hospital for your mental health condition to be assessed.

Normally you can be sent to hospital for no more than 28 days. If your doctor thinks you need to be in hospital longer, they can tell the court and the court can extend the section for further 28-day periods, up to 12 weeks at the most.

Under the emergency measures, there would be no 12-week upper limit. This means that you can be kept in hospital, under a section 36 or 37, for longer than 12 weeks.

## **Changes to court orders for the detention of accused or convicted persons in hospital**

If you are accused or convicted of a crime, the court may feel that you need to be detained in hospital. Normally 2 doctors have to assess you and agree that you are so unwell that you need to be in hospital.

Under changes to court orders Section 36, 37, 38, 45A, and 51 of the new legislation, you can be sent to hospital if 1 doctor says that you are unwell. However, the court has to agree that this is necessary because of the circumstances.

## **Changes to emergency detention of voluntary patients already in hospital**

Under the Mental Health Act, in emergencies professionals have the power to detain you if you are a voluntary patient. This is to stop you leaving hospital if a professional thinks that you are a risk to yourself or others.

Under these powers, you can only be held for a short time:

You can only be held after this time if a full Mental Health Act assessment is done, and professionals agree to further detain you. This will usually be under sections 2 and 3 of the Mental Health Act.

The emergency legislation will extend these powers, so you can be held for an increased time. This is because it might take professionals longer to assess patients who are held on these temporary sections.

The extended timeframes are:

- Under section 5 (2) – you can be held up to 120 hours, and
- Under section 5 (4) – you can be held up to 12 hours.

## **Changes to the transfer of prisoners to hospital**

Under the Mental Health Act, if you are a prisoner you can be transferred to hospital. This happens if 2 doctors think this is the best thing for you, because of the nature of your mental disorder. The Secretary of State for Justice must consent to the transfer.

This power is under section 47 of the Mental Health Act.

The emergency legislation says that only 1 doctor needs to recommend the transfer of you from prison to hospital but the Secretary of State for Justice must still consent to the transfer.

### **Changes to continuation of treatment**

Under some sections of the Act, your doctor can only continue to authorise your treatment without your consent if a SOAD agrees. SOAD means 'Second Opinion Approved Doctor'.

For example, under section 3 of the Act you can be treated against your will for 3 months. After 3 months, your doctor can only authorise treatment for you without your consent if a SOAD agrees.

Under the change, your doctor will no longer need a SOAD to agree before continuing to authorise treatment that you don't consent to.

### **Are there any changes to SOAD arrangements?**

Yes. The SOAD will now talk to you on the phone they will not come and see you

### **Changes to police holding powers**

You might be in the community or your own home. Police might be concerned about the safety of you or others and that you have a mental disorder.

They have powers under the Act to hold you in a place of safety. Depending on your circumstances, this could be a hospital, your home, the home of another or a police station.

The police have these powers under sections 135 and 136 of the Mental Health Act.

The change means that you can be held for an initial period of up to 36 hours. This can be extended for a maximum of another 12 hours.

### **Are there any changes to Mental Health Review Tribunals?**

Mental Health Tribunals are not covered in this piece of legislation. But there are some changes to the way Mental Health Tribunals take place:

- Tribunals will still be taking place
- the tribunal hearing will be done by video conference
- You can still attend the tribunal yourself via video conference

### **Are there changes to Lay Manager Hearings?**

Yes. Lay Manager Hearings will now take place as a remote hearing. You may wish to attend via video conference or if you prefer, speak to the panel on the phone.

