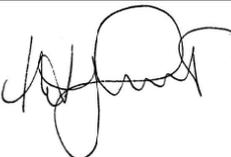




**Mental Health Legislation Administration (MHLA)**

<b>Policy Number &amp; Category</b>	<b>MHL05</b>	<b>Mental Health Legislation</b>
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<b>Policy Lead</b>	<b>Head of Mental Health Legislation</b>	
<b>POLICY AUTHOR</b> (If different from above)		
<b>Exec Sign off Signature (electronic)</b>		
<b>Disclosable under Freedom of Information Act 2000</b>	<b>Yes</b>	

## **POLICY CONTEXT**

- This policy gives guidance on the responsibilities of Mental Health Legislation Administrators (MHLAs) under the Mental Health Act 1983 (MHA) and in addition, it will also provide guidance on the administration of the Mental Capacity Act (2005) (MCA) and the Deprivation of Liberty Safeguards (DoLS).
- This is a Trust wide policy and applies to all MHLAs and their assistants. This supports the requirements laid out in the Mental Health Act Code of Practice 2015 (MHA CoP).
- The responsibilities in relation to the MCA and DoLS will be detailed separately as this isn't a statutory function, but a policy requirement.
- This policy does not apply to the prison services
- The Trust has a Service Level Agreement with Sandwell & West Birmingham Hospitals to provide MHA Administration. This is not covered within this policy but the procedure can be found in Appendix 14.

## **POLICY REQUIREMENT (see Section 2)**

- MHLAs have overall responsibility, on behalf of the Trust for the proper receipt and scrutiny of documents (section papers and all other legal paperwork).
- MHLAs are responsible for calculating and informing Responsible Clinicians (RCs) of consent to treatment requirements and section renewals / CTO extensions
- In addition, it is the responsibility of the MHLA to: inform patients and their nearest relative of their detention including CTOs; Provide patient information leaflets; Provide wards/ care co-ordinators with advice on mental health legislation and its requirements; train nursing staff on receipt & scrutiny of detention papers; arrange for patients to appeal to the Tribunal and / or Lay Managers; Supply information on gaining a solicitor from the central list; Provide information to patients on the role of the Care Quality Commission (CQC); provide information to maintain the central s117 register; provide information to maintain the central Conditional Discharge register; Have access to the regional database of s12 approved doctors / Approved Clinicians (ACs).

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# 1 INTRODUCTION

## 1.1 Rationale (Why)

This policy gives guidance on the responsibilities of hospital managers under the Mental Health Act 1983 (MHA) and on their specific powers and duties. It provides guidance on the identification of hospital managers and delegated functions. This policy concentrates on the functions delegated from Trust Board to Mental Health Legislation Administrators (MHLAs). In addition, it will also provide guidance on the administration of the Mental Capacity Act (2005) (MCA) and the Deprivation of Liberty Safeguards (DoLS).

## 1.2 Scope (Where, When, Who)

This is a Trust wide policy and applies to all MHLAs and their assistants. This supports the requirements laid out in the Mental Health Act Code of Practice 2015 (MHA CoP).

The responsibilities in relation to the MCA and DoLS will be detailed separately as this isn't a statutory function, but a policy requirement.

This policy does not apply to the prison services.

The MHAA in the SLA for SWBH is covered in Appendix 14.

## 1.3 Principles (Beliefs)

The underlying principles of this policy are the 5 principles of the **MHA**:

### 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

**And the 5 statutory MCA Principles:**

1. A person must be assumed to have capacity unless it is established that they lack capacity
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

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.

## **2 POLICY (What)**

### **2.1 GENERAL**

In addition to the key areas of responsibilities which are broken down specifically in this policy, the MHLAs have additional functions. They are as detailed below.

- 2.2 To write to patients and nearest relatives (where appropriate) to inform of the detention including CTOs (the standard letters must be used)
- 2.3 To provide patient information leaflets regarding the section under the MHA
- 2.4 To include information for patients on their rights to appeal to the Tribunal and / or Lay Managers
- 2.5 To supply information on gaining a solicitor from the central list
- 2.6 To provide information to patients on the role of the Care Quality Commission (CQC)
- 2.7 To provide information to maintain the central s117 register

- 2.8** To provide information to maintain the central Conditional Discharge register
- 2.9** To provide information to maintain the central Deprivation of Liberty Safeguards (DoLS) register
- 2.10** To provide information to maintain the central Trust s12 approved doctors register
- 2.11** Have access to the regional database of s12 approved doctors / Approved Clinicians (ACs) to check the status of detaining doctors against
- 2.12** MHLAs must be compliant with the Trust Information Governance training and be able to maintain confidentiality and know when it is appropriate and acceptable to share patient information (CoP ch10)
- 2.13** All original paperwork relating to detention (including consent to treatment) must be sent to the MH Legislation Office.
- 2.14** Copies of CQC notifications will be centrally recorded by the MHLA and forwarded to the appropriate department leads.
- 2.15** All original DoLS paperwork will be kept in a DoLS file in the MHL Office
- 2.16** MHLAs should be the first point of contact for providing advice and support for clinicians in relation to the MHA
- 2.17** If the MHLA has any concerns or queries, they can contact the Head of Mental Health Legislation (HMHL), Deputy Mental Health Legislation Manager (DMHLM) or the Trust Solicitor for support or advice.
- 2.18** MHLAs must attend a monthly business meeting chaired by the DMHLM to ensure they are up to date with any legislation / trust procedures. This will also be a forum for brainstorming or problem solving.
- 2.19** Where appropriate, concerns or risks noted will be escalated to the MH Legislation Committee via the HMHL.
- 2.20** MHLAs will attend Bed Management Meetings (weekly in Secure services and only where appropriate in non-secure services) to be involved in discussions around new referrals, ward transfers, patients at risk in community, waiting lists for admission and discharges. The Secure services link in with each other and HMP Birmingham by video conference call.

- 2.21** MHLAs will receive and send medical recommendations to the Ministry of Justice (MoJ), advise them of bed availability; provide details of who the patient's RC will be; if appropriate treatment is available and where; and the Level of Security of the hospital (i.e. Low, medium, high).
- 2.22** MHLAs will then liaise with appropriate Prison Service to ensure all relevant paperwork has been sent to the MoJ from their service and arrange a suitable admission date and time for when the Warrant is received. (Admissions cannot take place until warrant is in place). Once the warrant has been received the MHLA must advise the ward/prison service and confirm the admission date and time.
- 2.23** In non-secure settings, 2.20 - 2.22 will need to be done in liaison with the Trust bed management department.
- 2.24** MHLA are responsible for contacting other hospitals with regards to transfers in/out of services ensuring all relevant section papers are e-mailed using secure e-mail so that all paperwork is received and scrutinised **before** transfers take place.
- 2.25** Secure MHLAs will attend the quarterly MAPPA meetings for each site, taking notes to update spread sheets held by MHLAs with any comments / issues / actions
- 2.26** The MHLA will be the point of contact for MAPPA agents regarding queries with inpatients / outpatients they are aware of. Receive and send MAPPA Notifications forms from RCs and any returns from MAPPA.
- 2.27** If non-secure services have a patient who is subject to MAPPA, the MHLA will follow the guidance detailed in 2.25 and 2.26 and seek support from secure MHLAs where appropriate.
- 2.28** The following link will take you to the MAPPA pack on the intranet <http://connect/corporate/governance/mental-health-act/Pages/Resources.aspx>
- 2.29** If there is any correspondence for the victim of a detained patient, the MHLA will send and receive information as directed by the patient's RC (see Appendix 2 for guidance).
- 2.30** MHLAs must process any Nearest Relative Orders for Discharge, by informing the RC as soon as the request is received by the office, checking the validity of the Nearest Relative and arranging the consideration hearing if the RC decides to bar the order.
- 2.31 MHA RECEIPT & SCRUTINY**
- 2.32** MHLAs have overall responsibility on behalf of the Trust Board for the proper receipt and scrutiny of MHA documents (section papers and all other legal paperwork) and to train nurses on the receipt of section paperwork.

**2.33** Scrutiny involves a more detailed check for omissions, errors and other defects and, taking action to have the documents rectified (if applicable under section 15) after they have already been acted on.

**2.34** If the section papers are received by someone else (i.e. ward staff out of hours), the MHLA must scrutinise as soon as possible for accuracy and completeness and check they do not reveal any failure to comply with the procedural requirements of the MHA in respect of applications for detention.

**2.35** Although there is no provision under section 15 of the MHA to rectify Community Treatment Order (CTO) paperwork, section 19 transfer documents, section 20 renewals, joint medical recommendations and court paperwork, the MHLA must still scrutinise it, to ensure it is correctly completed as significant errors may invalidate the authority to detain.

**2.36** MHLAs should be available to assist/advise professionals with completing the forms.

**2.37** All section papers must be sent for medical scrutiny using the Medical Scrutiny rota.

### **2.38 RENEWALS / EXTENSIONS**

**2.39** MHLAs must remind the RC 2 months prior to the expiry of detention or CTO in writing using the standard RiO letter.

**2.40** For patients detained under section 2, the MHLA must write to the RC to determine whether a MHA assessment will be required for a section 3 in line with the Joint assessment for admission under the MHL02 Joint Assessment for Admission under the MHA policy (See Appendix 3 for email template and contact information)

### **2.41 MHA - CONSENT TO TREATMENT**

**2.42** MHLAs must be able to calculate when consent to treatment or a Second Opinion Appointed Doctor (SOAD) is required (for inpatients and CTO patients)

**2.43** MHLAs must ensure that systems are in place to remind RCs and the patient at least 4 weeks before the expiry of the three month period (and one month for CTOs).

**2.44** If a T3 certificate is completed and left on the ward (or community team base) the original must be sent to the MHL Office as soon as possible.

**2.45** All CTO12 and T2 certificates should be sent for medical scrutiny using the Medical Scrutiny rota.

### **2.46 MHA – TRIBUNALS: APPEALS / REFERRALS**

**2.47** MHLAs will have a good working knowledge of the Practice Directions and requirements of the Tribunal and follow the procedural rules by which it operates.

**2.48** MHLAs must ensure all patients – including CTO - receive the appropriate information regarding their rights to appeal to the Tribunal

**2.49** The rules place a statutory responsibility on the MHLAs to provide the Tribunal with a statement of relevant facts.

**2.50** MHLAs must ensure that they have systems in place to alert the need for a Tribunal for the following occasions:

- Refer any patient detained under Part 2 of the MHA to the Tribunal after six months, including CTOs (from first date of detention including any detention under Section 2) if they or their nearest relative haven't appealed
- Refer all CTO patients to the Tribunal if they have not had a hearing within the previous six months
- Refer patients who have not had a Tribunal in three years to the Tribunal (or 1 year for under 18s) (incl part 3 sections 37, 47 and 48. For restricted patients prompt the MoJ if a referral has not been received)
- Refer all patients who are revoked from CTO to the Tribunal immediately
- Submit all appeals against section to the Tribunal (section 2 within 14 days, section 3 once during each period of detention)

**2.51** MHLAs must ensure that:

- the Tribunal is notified immediately of any events or changes that might have a bearing on Tribunal proceedings
- Ensure that the relevant professionals are aware of the Tribunal
- Ensure that reports, documents and information are provided in accordance with the Tribunal's rules and practice directions
- The signed reports are submitted to the appropriate Tribunal office by secure e-mail (or placed in black boxes in secure services) 3 weeks from the application date.
- Ensure a reminder is sent 48 hours prior to the Tribunal Hearing to all attendees to ensure attendance

**2.52** Ensure that suitable accommodation is available and prepared for the Tribunal (practice directions are provided by the Tribunal on appropriate accommodation for hearings).

## **2.53 MHA - LAY MANAGERS: HEARINGS**

- 2.54** MHLAs must ensure all patients – including CTO - receive the appropriate information regarding their rights to appeal to Lay Managers
- 2.55** Co-ordinate all requests for Lay Managers to consider an appeal against detention (these can be requested by patients detained on sections 2, 3, 37, 47 and a CTO at any time, with no time limit to the number of appeals)
- 2.56** Co-ordinate all Lay Manager hearings for section renewals, CTO extensions and Nearest Relative requests for discharge.
- 2.57** The MHLA will inform the nearest relative where appropriate, of the hearing.
- 2.58** The MHLA will be responsible for contacting Lay Managers to obtain three members to sit on each panel using the central booking system, and requesting professionals' reports.
- 2.59** MHLAs should ensure the panel know where to contact them during the hearing, should they need to.
- 2.60** **During times of pandemic / emergency situations, these hearings may be held remotely using video conferencing technology. (See Appendix 4 for Remote Lay Manager Hearing Procedures).**
- 2.61 MCA & DoLS**
- 2.62** MHLAs must ensure they are up to date with current legislation and practice requirements.
- 2.63** Where a mental capacity assessment records the patient as lacking capacity to consent to admission for care and treatment, then the MH Legislation Office must be informed by the ward
- 2.64** When the Ward Manager (managing authority) grants an Urgent DoLS authorisation, they will send this to the LA along with a request for a standard authorisation. The original of both of these forms must be sent to the MHL Office.
- 2.65** When the ward receives a Standard Authorisation from the Local Authority (Supervisory Body) they must send the original to the MHLO.
- 2.66** Any reminders relating to expiry of authorisations will be sent by the MHLAs to the Ward Manager with the Deputy Ward Managers copied in.

**2.67** The MHLA will scan and upload these to RiO

**2.68** All information relating to DoLS must be centrally collated by the local MH Legislation Office and sent to the identified MHAA responsible for maintaining the upkeep of the shared DoLS spread sheet.

**2.69** The CQC must be informed of the outcome of a standard authorisation request. Copies of CQC notifications must be sent to the MHLO who will inform the MHAA responsible for the central spreadsheet so this can be recorded centrally.

### **3. PROCEDURE**

#### **3.1 MHA GENERAL**

**3.2** Once the MHLA has received and scrutinised the section papers, using the standard letters, they will write to the patient and their nearest relative (where appropriate). Enclosed with this letter will be an information leaflet pertaining to the specific section under which the patient is detained which includes information on:

- how to appeal to the Tribunal and / or Lay Managers;
- how to secure the service of a solicitor (from the central list)
- The role of the Care Quality Commission (CQC) and how to complain if they wish to
- Advocacy leaflet
- Your Nearest Relative under the MHA1983 Information Sheet
- Information on the IMHA service

**3.3** The clinical staff involved in the MHA assessment, must ensure the original documents are sent to the MHL Office for their area as soon as possible.

**3.4** The MHLA will receive and scrutinise the section papers.

**3.5** The MHLA will send copies of the section papers for medical scrutiny and attach a copy of the amendment letter to any of the papers that were sent back for amendment so the scrutinising doctor is aware that any error has been noted and acted on.

**3.6** If any rectifiable errors are found and it is within the 14 days from completion the MHLA will send the papers back to the author for rectification under section 15. Guidance on non-rectifiable errors can be found in Appendix 5.

**3.7** As Community Treatment Order (CTO) paperwork, section 19 transfer documents, section 20 renewals, joint medical recommendations and court paperwork cannot be rectified under section 15 of the MHA, the MHLA will make a decision as to whether the error is de minimis (so trivial as to have no effect on the legality of the form), or

whether the error is significant enough to render the paperwork invalid meaning a fresh form would need to be completed.

- 3.8** If a fresh form is required, the MHLA will email the relevant professional explaining this.
- 3.9** If an error is found on section papers outside of the 14 days, then the MHLA will make a professional judgement as to whether the error is de minimis. If it is, a file note should be made to record that the error has been noted and the decision on the outcome of de minimis.
- 3.10** If the error is deemed not to be de minimis and the detention is unlawful, then the RC should be immediately informed so they can inform the patient of the error and take appropriate action. (See Appendix 6 on Procedures for Fundamentally Defective Applications under the MHA)
- 3.11** The MHLA must upload MHA paperwork within 3 days of receipt to ensure a true record is maintained. The original of all paperwork must be kept in the patient's MHA file In the MHL Office.
- 3.12** The MHLA will use the to-do list on RiO to co-ordinate the renewal of section or extension of CTO / Consent to Treatment.
- 3.13** The MHLA will remind the RC, using the standard RiO letter of the pending expiry date, 2 months prior to the expiry date of unrestricted sections.
- 3.14** At day 20 of a section 2, the MHLA will write to the RC using the standard RiO letter, asking whether they will be detaining the patient on a section 3 at the end of the 28 days, so that a timely referral to the AMHP service can be submitted (please read in conjunction with the MHL02 Joint Assessment for Admission Under the MHA Policy).
- 3.15** Although predominantly for Forensic MHLAs, there may be occasions where non-secure MHLAs need to follow the following guidance.
- 3.16** MHLAs following the above Bed Management guidance will receive and send medical recommendations to the Ministry of Justice (MoJ), advise MoJ of bed availability, provide details of who the patient's RC will be, if appropriate treatment is available, where it is available and the Level of Security of hospital (i.e. high, medium, low). MHLAs will then liaise with the appropriate Prison Service to ensure all relevant paperwork has been sent to the MoJ from their service and arrange a suitable admission date and time for when the warrant is received. (Admissions cannot take place until the warrant is in place). Once the warrant is received, the MHLA must advise the ward/prison service and confirm the admission date and time.

- 3.17** The MHLA will contact other Hospitals with regards to transfers in/out of services ensuring all relevant section papers are e-mailed using secure e-mail so that all paperwork is received and scrutinised before transfers take place.
- 3.18** MHLAs in Forensic services must attend weekly Bed Management Meetings to be involved in discussions around new referrals, ward transfers, patients at risk in community, waiting lists for admission and discharges. The Forensic Services link in with each other and HMP Birmingham by satellite. Non-secure MHAAs are not required to attend bed management meetings as standard, but there may be occasions where this is deemed useful and appropriate.
- 3.19** Although predominantly for Forensic MHLAs, there may be occasions where non-secure MHLAs need to follow the following guidance. MHLAs (Forensic) will attend the quarterly MAPPA meetings for each site, taking notes to update spread sheets held by MHLAs with any comments/issues/actions.
- 3.20** The MHLA will be the point of contact for MAPPA agents regarding queries with inpatients/outpatients that they are aware of. They will receive and send MAPPA Notification forms from RCs and any returns from MAPPA
- 3.21** In relation to victims of unrestricted Part 3 sections the MHLAs will send and receive information as directed by RCs and the Probation Board. MHLAs are not responsible for identifying any victim, or for contacting them directly.
- 3.22** When the MHLA receives the discharge onto, review of and discharge from section 117 aftercare forms they will inform the designated MHAA who will record these accordingly on the central database.
- 3.23** When any patient is conditionally discharged by the Tribunal service, the MHLA will ensure they will inform the designated MHAA who will record these accordingly on the central Conditional Discharge database.
- 3.24 MHA – CONSENT TO TREATMENT**
- 3.25** The MHLA will use the to-do list on RiO to co-ordinate the consent to treatment reminders in conjunction with the local recording methods.
- 3.26** Consent to treatment or a SOAD (Second Opinion Appointed Doctor) is required at the end of the first three months of continuous detention, or at the end of the first month of a CTO (whichever is latest).
- 3.27** The MHLA will write to the RC using the standard RiO letter, one month prior to consent being due, reminding them this is due and the process.

- 3.28** The RC should inform the MHLA of their requests for a SOAD and forward the reference number or a copy of the e-mail they receive from CQC to the MHLA so that they can monitor receipt.
- 3.29** Although the MHA does not require the validity of certificates to be reviewed after any particular period, it is good practice for the RC to review them at regular intervals.
- 3.30** Section 61 provides that where a patient is given treatment in accordance with Section 57(2) or Section 58(3)(b), 58A (4) or (5) or 62A (i.e. where a treatment plan has been authorised by a doctor appointed by CQC), the RC must give CQC a report on the treatment and the patient's condition.
- 3.31** The MHLA will remind the RC of this responsibility under s61 in the section renewal reminder letter and include a copy of the form (see the MHL10 Consent to Treatment Policy).
- 3.32** Once completed the s61 form must be returned to the MHL Office who will send it to the CQC with the appropriate certificate.
- 3.33 MHA - APPEALS/REFERRALS – TRIBUNAL**
- 3.34** Authority statements must be completed by the MHLA using the agreed templates and emailed to the First-Tier Tribunal's reports team via secure email.
- 3.35** The Tribunal sends a Case Notification Letter (1) & Directions (CNL1 Form) giving details of the listing period and deadline for providing an HQ1 Listing Form, Reports, and Authority Statement. The MHLA will then send out an e-mail to participants to request availability, reports and in cases where patients do not have a solicitor, the RC, nurse or other health or social care professional familiar with the patient and who has had contact with the patient in the past four weeks are required to complete Direction for a Capacity Statement (MH3 Form) advising of capacity
- 3.36** MHLAs must refer any patient detained under Part 2 of the MHA to the Tribunal after six months if they or their nearest relative haven't appealed using the relevant referral form. This is sent to the Tribunal service application team, using secure email.
- 3.37** MHLAs must submit all appeals against detention to the Tribunal (section 2 within 14 days, section 3 once during each period of detention) The RC and Solicitor are contacted for dates. Form HQ1 must be submitted by email, listing the available dates (please give at least 3 full days or 6 half days within the listing window).
- 3.38** MHLAs must refer all CTO patients to the Tribunal if they have not had a hearing within the previous six months using the relevant referral form. This is sent to the Tribunal service application team, using secure email.

- 3.39** MHLAs must refer patients who have not had a Tribunal in three years (under 18s 1year) to the Tribunal using the relevant referral form. This is sent to the Tribunal service application team, using secure email.
- 3.40** MHLAs must refer all patients who are revoked from CTO to the Tribunal immediately using the relevant referral form. This is sent to the Tribunal service application team, using secure email
- 3.41** The Tribunal should be notified immediately of any events or changes that might have a bearing on Tribunal proceedings via secure email.
- 3.42** MHLAs must ensure that the relevant professionals are aware of the Tribunal and contacted as soon as the MHLA receives the application. Reports must be requested at this point.
- 3.43** The MHLA must ensure that reports, documents and information are provided in accordance with the Tribunal's rules and practice directions and are responsible for chasing overdue reports.
- 3.44** The reports are submitted to the Tribunal office by secure e-mail in accordance with the Tribunal's rules and practice directions
- 3.45** MHLAs will book the accommodation for Tribunals that have been agreed by the Trust for use by the Tribunal service.
- 3.46** This will also be checked immediately prior to the hearing to ensure the room is adequately prepared.
- 3.47** 7 days prior to the report due date, a reminder will be sent for timely submission of the report.
- 3.48** If a report remains outstanding, then continuous efforts must be made by the MHLO to obtain the reports to prevent Orders being issued by the Tribunal.
- 3.49 For times of emergency / pandemics where face to face hearings may not be possible, please see Appendix 7 for the process for holding remote Tribunals via video conferencing technology. This is issued by the Tribunal service and therefore may be subject to change).**
- 3.50 MHA – LAY MANAGER HEARINGS**
- 3.51** MHLAs will use the Lay Manager booking process as agreed by the MH Legislation Committee detailed below:

- When the renewal reminder letter is sent from the MHL Office to the RC 2 months prior to section expiry, it will ask for availability from the RC for the 2 months before the section expiry date.
- Availability must be received by the MHLO from the RC within 3 weeks of the renewal letter being sent
- The hearing will then be booked and the panel booked
- Reports for the hearing must be received 1 week before the hearing date.
- If the patient's section is not renewed, the hearing will be cancelled
- Any non-compliance will be raised by the MHL Office directly to the Clinical Director (CD)
- Any exceptions (hearings held after the renewal date) will be reported to the Chief Medical Legislation Officer, Head of Mental Health Legislation and the Medical Director

**3.52** The MHLA will contact Lay Managers to obtain three members to sit on each panel using the central booking system, and:

- Request reports from the nurse, AMHP/ Social Worker or care co-ordinator (SCR) and the RC using the standard letter attached to an email due to Section 2 time constraints. Telephone calls are made to the relevant duty desk if the patient does not have an allocated care co-ordinator. The appropriate manager will be copied in.
- Ensure all reports are received on time (these must be chased if not received)
- Ensure reports are up to date (written within 4 weeks prior to the hearing), signed, dated and named
- Ensure appropriate accommodation is available and prepared. The standards are the same as those required by the Tribunal.
- Provide Lay Manager panels with a Decision Form, copies of detention papers, section 132 rights and reports and collect it back at the end of the hearing

**3.53** MHLAs should ensure the panel know where to contact them during the hearing, should they need to.

**3.54** Ensure copies of the Decision Form are sent to the RC, Social Worker, Head of Mental Health Legislation, the patient, care co-ordinator, ward manager and if a solicitor attends the hearing a copy should be sent to solicitor.

**3.55** The decision form should be uploaded to RiO.

**3.56 For times of emergency / pandemic where face to face hearings may not be possible, please see Appendix 4 for the Process for Holding Remote Lay Manager Hearings).**

### **3.57 Consideration Hearings**

**3.58** MHLAs must process any Nearest Relative Orders for Discharge, by informing the RC as soon as the request is received by the office, checking the validity of the Nearest Relative and arranging the consideration hearing if the RC decides to bar the order.

**3.59** If the panel decide a full hearing is required following the consideration hearing, then the MHLA will arrange the hearing in the same way as a review / appeal hearing in section 3.46 above

### **3.60 MCA & DoLS**

**3.61** Where a mental capacity assessment records the patient as lacking capacity to consent to admission for care and treatment, then the MH Legislation Office must be informed by the Ward Manager by email.

**3.62** When the Ward Manager grants an Urgent DoLS authorisation, they will send this to the LA along with a request for a standard authorisation. The original of both of these forms must be sent to the MHL Office as soon as possible.

**3.63** The MHLA will scan and upload these to RiO.

**3.64** All information relating to DoLS must be centrally collated by the MH Legislation Office.

**3.65** This information will be recorded on a central spread sheet by the identified MHAA, documenting clearly the dates of the urgent authorisation and request for standard authorisation; expiry date of the urgent authorisation; and date for reminder to be emailed to the Ward Manager of imminent expiry (see Appendix 8)

**3.66** On day 5 of the *Urgent Authorisation* the MHLA will email the Ward Manager (cc the deputy ward manager) and the central mailbox at the Local Authority [BIManagement@birmingham.gov.uk](mailto:BIManagement@birmingham.gov.uk) to remind of the urgent expiry (using email template in Appendix 9)

**3.67** If the urgent expiry is extended (this can only be done once) the Ward Manager must inform the MHL Office by sending the original form and the MHLA will upload this to RiO and record on the spread sheet.

- 3.68** On day 5 of the *Extended Urgent Authorisation* the MHLA will email the Ward Manager (cc the deputy ward manager) and the central mailbox at the Local Authority [BIManagement@birmingham.gov.uk](mailto:BIManagement@birmingham.gov.uk) to remind of the extended urgent expiry (using the email template in Appendix 10)
- 3.69** 1 week before the end of the *Standard Authorisation*, the Ward Manager (cc the deputy ward manager) and central mailbox at the LA will receive a reminder from the MHL Office (Appendix 11 email template).
- 3.70** The CQC must be notified of the outcome of a request for DoLS authorisation. A copy of this notification form must be sent to the MHL Office so it can be recorded on the central spread sheet by the identified MHAA and up loaded to RiO.
- 3.71** If a patient is transferred from a ward whilst detained under DoLS, the MHLA must record this as the end reason (as you cannot transfer a patient under DoLS).

#### 4 RESPONSIBILITIES

This is to be completed and should summarise defined responsibilities relevant to the policy.

Post(s)	Responsibilities	Ref
All Staff	Ensure they are aware of the policy and their responsibilities	
Service, Clinical and Corporate Directors	Ensure they are compliant with the policy	
Policy Lead	Ensure the policy is kept up to date with any legislation change or statutory guidance updates	
Executive Director	Ensure the policy is up to date and compliant with legislative requirements	
MHLAs	Ensure they and their assistants are familiar with the policy and inform the HMHL of any practice / process changes so the policy can accurately reflect them where appropriate	

#### 5 DEVELOPMENT AND CONSULTATION PROCESS

This is an outline of who has been involved in developing the policy and procedure including Trust forums and service user and carer groups.

Consultation summary	
Date policy issued for consultation	Date: August 2020

Number of versions produced for consultation		1
<b>Committees / meetings where policy was formally discussed</b>		<b>Date(s)</b>
MHA Administrator Business meeting		July
MHL Committee		October
<b>Where received</b>	<b>Summary of feedback</b>	<b>Actions / Response</b>

## 6 REFERENCE DOCUMENTS

MHA Code of Practice 2015

MCA Code of Practice 2007

MHL02 Joint Policy for Assessment for Admission under the MHA

## 7 BIBLIOGRAPHY

MHA Manual 22<sup>nd</sup> Edition, Richard Jones

MHL14 MCA Policy

MHL01 MHA Policy

MHL10 Consent to Treatment

## 8 GLOSSARY

Definitions of technical or specialised terminology used within the policy.

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 be 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
Capacity	The ability to make a decision about a particular matter at the time the decision needs to be made. Some people may lack capacity to make a particular decision (e.g. to consent to treatment) because they cannot understand, retain, use or weigh the information relevant to the decision. A legal definition of lack of capacity for people aged 16 or over is set out in Section 2 of the Mental Capacity Act 2005.
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.
Conditional Discharge	The discharge from hospital by the Secretary of State for Justice or the Tribunal of a restricted patient subject to conditions. The patient remains subject to recall to hospital by the Secretary of State
Consent	Agreeing to allow someone else to do something to or for you, particularly consent to treatment. Valid consent requires that the patient has capacity to make the decision and that they are given the information they need to make the decision and that they are not under any duress or inappropriate pressure.
CQC	Care Quality Commission
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
IMCA	Independent Mental Capacity Advocate. An advocate able to offer help to patients who lack capacity under arrangements

	which are specifically required to be made under the Mental Capacity Act 2005
IMHA	Independent Mental Health Advocate. An advocate available to offer help to patients under arrangements which are specifically required to be made under the MHA
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).
MAPPA	Multi-Agency Public Protection Arrangements. Multi-agency public protection arrangements are in place to ensure the successful management of violent and sexual offenders
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
Mentally Disordered Offender	A person who has a mental disorder and who has committed a criminal offence
Medical Recommendations	Normally means a recommendation provided by a doctor in support of an application for detention or a guardianship application
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
Section 12 Approved Doctor	A doctor who has been approved under the Act by the Secretary of State for Health as having special experience in the diagnosis or treatment of mental disorder, or by a body which the Secretary of State has authorised to exercise the approval function under the Act
SOAD	Second Opinion Appointed Doctor – appointed independently by the CQC to certify treatment for mental disorder in line with MHA
Tribunal	This is a judicial body which has the power to discharge patients
Victim	A person who has been subject to a serious violent or sexual offence

## 9 AUDIT AND ASSURANCE

What steps will be undertaken to assess how well the policy is working

What criteria will be used for assurance that the policy is being met.

Element to be monitored	Lead	Tool	Freq	Reporting Arrangements
Consent to Treatment	Pharmacy	Audit	Annual	MHLC
Unlawful Detentions	HMHL	Incident Report	Quarterly	MHLC

## 10 APPENDICES consisting of:

<b>Appendix 1</b>	Equality Assessment
<b>Appendix 2</b>	Victims' rights Guidance for MHLA, RCs and Lay Managers (incl. letter)
<b>Appendix 3</b>	Section 2 – 3 assessment letter
<b>Appendix 4</b>	Remote Lay Manager Hearing Procedures
<b>Appendix 5</b>	Section 15 MHA – Rectifiable and 'de minimis' errors
<b>Appendix 6</b>	Standard Operating Procedures for Fundamentally Defective Applications for Detention under the MHA
<b>Appendix 7</b>	Mental Health Review Tribunals and Court Hearings by video
<b>Appendix 8</b>	DoLS Record Sheet
<b>Appendix 9</b>	Email template 1: Day 5 of Urgent Authorisation Reminder of Expiry
<b>Appendix 10</b>	Email template 2: Day 5 of Extended Urgent Authorisation Reminder of Expiry
<b>Appendix 11</b>	Email template 3: Standard Authorisation Reminder of Expiry (1 week prior to expiry)
<b>Appendix 12</b>	Email template 4: Request for Standard Authorisation Form 4 (urgent received)
<b>Appendix 13</b>	Email 5: Outcome of DoLS assessment (Status of Patient)
<b>Appendix 14</b>	SWBH MHAA Procedures



### 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>MHL05 MENTAL HEALTH LEGISLATION ADMINISTRATION 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>AUGUST 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 administering the statutory functions of the Mental Health Act 1983 as delegated by Trust Board				
<b>Who will benefit from the proposal?</b>				
Patients, clinical staff and MH Legislation staff				
<b>Impacts on different Personal Protected Characteristics – Helpful Questions:</b>				
<i>Does this proposal promote equality of opportunity Eliminate discrimination</i>			<i>Promote involvement and consultation Protect and promote 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 Characteristic</b>	<b>No/Minimum Impact</b>	<b>Negative Impact</b>	<b>Positive Impact</b>	<b>Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.</b>
<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>	x			
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>			x	
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 [bsmhft.hr@nhs.net](mailto:bsmhft.hr@nhs.net) . 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.

**Victims' Rights to make representations and receive information From Hospital Managers (i.e. Mental Health Legislation Administrators)  
Guidance for Mental Health Legislation Administrators, RCs and Lay Managers.  
Birmingham and Solihull Mental Health NHS Foundation Trust**

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This note sets out guidance on the legal provisions which give the victims of mentally disordered offenders who are **not subject to Ministry of Justice restrictions** the right to certain information about discharge and the conditions of discharge. The provisions are in the Domestic Violence, Crime and Victims Act 2004 ("the DVCV Act") which came into force on 1 July 2005 and extended to unrestricted patients in the year 2008.

**Section 48 and Schedule 6 of the Mental Health Act 2007, extends, with modifications, victims' rights to cover certain unrestricted patients:**

**(1) S37;**

**(2) S45A hospital direction with expired limitation direction; and**

**(3) S47 (patient transferred without restrictions, or restrictions have ceased**

As under the existing provisions of the 2004 DVCV Act, the local probation board (providers) must take reasonable steps to establish (a) if the victim of the offence wishes to make representations as to whether the patient should be subject to conditions in the event of discharge from hospital; and (b) whether the victim wishes to receive information about those conditions in the event of his discharge.

As the local probation board has no remit in relation to non-restricted mentally disordered offenders detained in hospital, **the board must, at the appropriate point, notify the hospital managers (Mental Health Legislation Administrator, MHLA) of the hospital in which the patient is detained of the victim's wish to receive information and make representations.**

The hospital managers (MHLAs) then have responsibility for forwarding the victim's representations to the relevant persons i.e. RC and bodies (The Tribunal, Lay Manager panels) responsible for making decisions on discharge or Community Treatment Orders (CTOs) and for passing any information received from those persons (RC) or bodies (The Tribunal, Lay Manager panels) to the victim.

Hospital managers (MHLAs) must inform the victim (only those whose details are provided by the probation board/provider) if the patient's discharge is being considered or if the patient is to be discharged. Because unrestricted patients cannot be conditionally discharged, hospital managers must inform the victim who has requested to receive information **whether the patient is to be subject to a CTO; and, if so, to inform him of any conditions relating to contact with the victim or his family; any variation of the**

**conditions and the date on which the order will cease. Victims also have the right to make representations about the conditions to be attached to a CTO which hospital managers must forward to the responsible clinician.**

The MHLAs should maintain a list of patients of notifiable victims and such details should be passed on to the receiving hospital if the Patient transfers between hospitals.

So that hospital managers are in a position to comply with these obligations, **the RC and the Tribunal are required to inform hospital managers (MHLA) if the patient is to be discharged. RCs must also inform hospital managers whether they are to make a CTO and give the managers information regarding the imposition or variation of any conditions and when the order will end.**

**MHLAs will store correspondence that is generated in a separate victim file as third party information, not to be disclosed to the patient or their legal representatives.**

Further detailed guidance is available in enclosed DoH guidance

The standard letter is overleaf.

MHL Office details:

Date:

Dear

Please find enclosed a notification of discharge letter received from the Responsible Clinician in the case of patient xxx addressed to the notified victim In this case.

This is being sent you on behalf of the Hospital Managers of BSMHFT as you have exercised your legal right to receive this notification of discharge.

Please contact your victim liaison officer directly if you wish to clarify any issues in the first instance.

Yours Sincerely

MHL Administrator

The following single email will be sent by the local Mental Health Legislation Administrator with a read receipt request and uploaded to RIO.

1. AMHPSecurePSS@birmingham.gcsx.gov.uk
2. BSMHFT RC for the Patient
3. BSMHFT Ward Manager where the patient is currently located
4. BSMHFT RC Medical secretary

Dear AMHP and RC

This is a Formal Notification on behalf of the Responsible authority that patient:

Name:.....

DOB:.....

Rio No:.....

RC :

RC: Medical secretary tel No:

Has now been detained under Section 2 of the Mental Health Act for 20 days

**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.

## SECTION 15 – RECTIFIABLE AND ‘DE MINIMIS’ ERRORS

1. Section 15 does not apply to:
  - S19 transfer;
  - S20 renewals;
  - Joint medical recommendations;
  - CTO paperwork; and
  - Court documents
  
2. The words incorrect or defective refer to inaccurate or incomplete documents, i.e. a genuine mistake or omission. For example:
  - Incorrect – Where the admission would have been justified were it not for a genuine mistake: e.g. dates written down incorrectly, wrongly spelled names or places.
  - Defective – Providing incomplete information, e.g. leaving a space blank (other than signature) or failing to delete one or more alternatives in places where only one can be correct.
  
3. The following table provides **guidance** for identifying which errors are rectifiable or may be classed as de minimis. **Assuming the error has been identified within the rectifiable period of 14 days**
  
4. **If there is any doubt, the MHLA should seek support from the HMHL or the legal department.**

**Table 1.** Guidance for identifying which errors are non / rectifiable or de minimis

ERROR	NOT RECTIFIABLE	RECTIFIABLE	DE MINIMIS	COMMENTS
Spelling errors in patient name		✓	✓	
Spelling errors in address		✓	✓	
Differences in name		✓	✓ <sup>1</sup>	<sup>1</sup> if spelling mistake
Differences in address		✓	✓ <sup>1</sup>	<sup>1</sup> if spelling mistake
Incomplete addresses		✓	✓ <sup>1</sup>	<sup>1</sup> lack of postcode
No name for patient		✓		
No address for patient		✓		
No nearest relative details (s2)		✓		
No nearest relative details (s3)		✓		
Scant nearest relative details, i.e. phone number only		✓		
Incomplete address for doctor		✓		
Incomplete address for AMHP		✓		
More than 5 clear days between medical recommendations	✓ (Joint /after 14 days)	✓ <sup>1</sup>		<sup>1</sup> Get fresh med rec done if in 14 days
Medical recommendations signed after the AMHP's application	✓			
Neither doctor s12 approved		✓ <sup>1</sup>		<sup>1</sup> Get fresh med rec done if in 14 days
A doctor is disqualified from s12 duties but declares s12 approval	✓			
No hospital named on application		✓		
Wrong hospital named in application		✓		
No place where "appropriate treatment" available named (s3)		✓		
Places where "appropriate treatment" available do not match (s3)		✓		
Medical recommendation not signed		✓		
Medical recommendation not dated		✓		
Application made over 14 days after AMHP saw patient	✓			
Patient admitted to hospital over 14 days after last medical recommendation	✓			
Any error on a s19 transfer	✓		✓ <sup>1</sup>	Depends on error
Any error on a Joint medical recommendation	✓		✓ <sup>1</sup>	<sup>1</sup> Not date error
Any error on CTO documentation	✓		✓ <sup>1</sup>	Depends on error

## Appendix 6

## **STANDARD OPERATING PROCEDURE FOR FUNDAMENTALLY DEFECTIVE APPLICATION FOR DETENTION UNDER THE MENTAL HEALTH ACT 1983 (AMENDED 2007)**

1. There are standard procedures for rectification of an application and recommendations under Section 15 of the Mental Health Act 1983 within the period of 14 days beginning with the day on which a patient has been admitted to a hospital. In pursuance of an application for admission for assessment or treatment if the application or any medical recommendations given for the purpose of the application is found to be in any respect incorrect or defective. The application or recommendation may within the 14 day period and with the consent of the Managers of the hospital be amended by the person by whom it was signed and upon such amendments being made the application or the recommendations shall have effect and shall be deemed to have had an effect as if it had been originally made as so amended (excluding joint medical recommendations).
2. If within the period of 14 days it appears to the Managers of the hospital that one of the two medical recommendations on which an application for admission of a patient is founded is insufficient to warrant a detention of the patient in pursuance of the application they will give notice in writing to that effect to the applicant (Approved Mental Health Professional or nearest relative as the case may be) and where any such notice is given in respect of a medical recommendation the recommendation shall be disregarded.
3. The standard procedure to be followed within the 14 days under the above circumstances would be:
  - a) Fresh medical recommendations complying with the relevant provisions of this part of the Act to be made, i.e. furnished to the Managers of the hospital; or
  - b) The recommendation and the other recommendations on which the application is founded together comply with those provisions.
  - c) For a Joint Medical Recommendation, fresh recommendations must be sought
4. If an application had been made under Section 4 of the Mental Health Act, i.e. an emergency application, the emergency application would stand until 72 hours but not thereafter.

### **Fundamentally Defective Application within 14 days**

5. Rectification is primarily concerned with dealing with inaccurate recordings. It cannot be used to enable a fundamentally defective application to be retrospectively validated or to cure a defect which arises because a necessary event in the procedural change leading to the detention has simply not taken place. Rectification is primarily concerned with correction of errors on the face of the document.
6. A document that is signed by a person who is disqualified from making a recommendation by reason of Section 12 or the regulations made under Section 12a does not constitute a recommendation and it cannot be rectified.
7. Within the 14 day period of detention of a patient if it comes to the notice of the Hospital Managers in the case of Birmingham & Solihull Mental Health NHS Foundation Trust, as represented by the Mental Health Legislation Administrators, that such an application and/or its supporting recommendations were fundamentally flawed, i.e. they were not merely

incorrect or defective and not remediable under Section 15 of the Mental Health Act, under those circumstances the following procedure needs to be followed:

- a) The Mental Health Legislation Administrators will consult with the Head of Mental Health Legislation and the Chief Mental Health Legislation Officer. The Chief Mental Health Legislation Officer will consult with the Trust solicitor as necessary.
- b) Should the application be considered to be fundamentally flawed by the Chief Mental Health Legislation Officer/Head of Mental Health Legislation:
  - The Mental Health Legislation Administrator would inform the Responsible Clinician.
  - The Responsible Clinician would be asked to consider whether continued treatment as an informal patient or detention under Section 5(2) of the Mental Health Act is necessary and if necessary this is to be implemented.
  - The applicant would be informed regarding the application being fundamentally defective.
  - The doctors who made medical recommendations in this case also would be informed should such a recommendation be fundamentally defective.
  - The Responsible Clinician once notified would have the duty to consider informing the patient and would do so in all circumstances, both orally and in writing other than if the patient lacks capacity to understand the information provided and it is considered seriously detrimental to the patient's mental health to inform the patient. Under those circumstances the Responsible Clinician would have to carry out a mental capacity assessment and a best interest assessment in consultation with the multi-disciplinary team involved in the care of the patient.
  - The information if withheld from the patient due to lack of capacity would be provided to the patient as soon as the patient regains capacity.

#### **Fundamentally Defective Applications/ remediable application but discovered After the 14 Day Period**

8. Should a fundamentally defective applications or remediable applications be discovered after the 14 day period, which would generally occur:
  - During routine audits.
  - Due to new information becoming available from different sources.
  - Compliance visit reviews etc.

Under those circumstances the following procedure would be followed:

- a) The Head of Mental Health Legislation and the Chief Mental Health Legislation Officer would be informed regarding the fundamentally flawed application.
- b) The Head of Mental Health Legislation / the Chief Mental Health Legislation Officer will consult with the Trust solicitor as necessary.
- c) The Responsible Clinician/Consultant Psychiatrist treating the patient should the patient be currently detained or liable to be detained would be informed.

- d) If the patient remains an inpatient and /or remains liable to be detained, the patient would be informed verbally by the Responsible Clinician and in writing by the Mental Health Legislation Administrator that the application based on which they were detained was found to be flawed if they have capacity to receive this information. The determination of the patient's capacity would be made by the current treating Consultant Psychiatrist. There would be documentation of the capacity assessment on electronic clinical records of the patient and a best interest assessment involving a multi-disciplinary consultation would be documented by the Responsible Clinician.
- e) If the patient is no longer receiving inpatient treatment and is no longer liable to be detained or detained, under those circumstances there would be a presumption that the patient has capacity to receive the information and the information would be provided in writing on behalf of the Hospital Managers by the Mental Health Legislation Administrator that the application based on which they were detained was flawed.
- f) The Mental Health Legislation Administrator would also inform in writing the applicant (Approved Mental Health Professional or nearest relative) regarding the application being flawed. Should the application be based on a flawed medical recommendation the doctor making such a recommendation would also be informed.
- g) Should the flawed application be due to actions which require further escalation, due to concerns around professional practice of the AMHP / Doctor, the Responsible Officer for the doctor and the Local Authority Manager for the AMHP would be notified by the Chief Mental Health Legislation Officer of the flawed application / recommendation.

## 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:

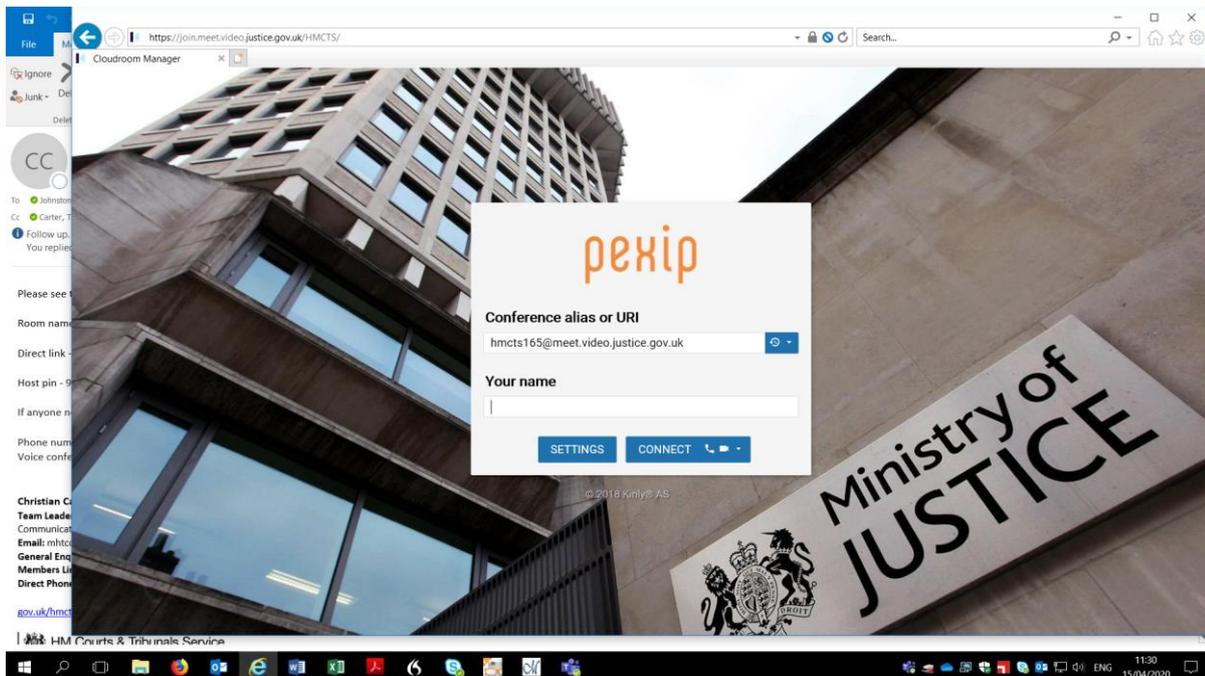
It is vital that you use **Google Chrome**, which is published on your desktop, or laptop



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

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 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 8

DoLS RECORD SHEET													
Name of patient	Ward	Name of Managing Authority Ward Manager	Date of Urgent Authorisation	Date of urgent expiry reminder due:	Date first urgent expiry reminder sent (to WM and LA):	Date of Standard authorisation request:	Outcome of Standard Authorisation Request:	Date of standard authorisation expiry reminder (1 week before):	Date of Urgent Extension:	Date Extended Urgent Reminder due:	Date Extended Urgent Reminder sent (to WM and LA)	Were CQC informed of the DoLS referral outcome?	Were the Compliance department and HMHL informed of the referral?

**Sample Email 1: Day 5 of Urgent Authorisation Reminder of Expiry**

To: Ward Manager; Peter Glover BCC

Cc: Deputy Ward Manager

Dear Both

Please be aware the patient on **NAME OF WARD (WARD PHONE NUMBER)** is currently detained under an urgent DoLS authorisation, due to expire on DATE.

Please liaise with each other and confirm the outcome with the MH Legislation Office.

Regards

MHLA

**Sample Email 2: Day 5 of Extended Urgent Authorisation Reminder of Expiry**

To: Ward Manager; Peter Glover BCC

Cc: Deputy Ward Manager

SUBJECT LINE: **EXTENDED** Urgent Authorisation Reminder of Expiry

Dear Both

Please be aware the patient on **NAME OF WARD (WARD PHONE NUMBER)** is currently detained under an extended urgent DoLS authorisation, due to expire on DATE.

Please liaise with each other and confirm the outcome with the MH Legislation Office.

Regards

MHLA

**Sample Email 3: Standard Authorisation Reminder of Expiry (1 week prior to expiry)**

To: Ward Manager; [BIManagement@birmingham.gov.uk](mailto:BIManagement@birmingham.gov.uk)

Cc: Deputy Ward Manager

SUBJECT LINE: STANDARD Authorisation Reminder of Expiry

Dear Both

Please be aware the patient on **NAME OF WARD (WARD PHONE NUMBER)** is currently detained under a standard DoLS authorisation, due to expire on DATE.

Please liaise with each other and confirm the outcome with the MH Legislation Office.

Regards

MHLA

**Sample Email 4: Request for Standard Authorisation Form 4 (urgent received)**

To: Ward Manager;

Cc: Deputy Ward Manager

SUBJECT LINE: Request for Standard Authorisation Form 4 (urgent received)

Dear **WARD MANAGER NAME**

I have received your Form 1 Urgent Request for DoLS authorisation, but have not received the Standard Authorisation Request Form 4.

Can you please send to me ASAP?

Regards

MHLA

**Sample Email 5: Outcome of DoLS assessment (Status of Patient)**

To: Ward Manager;

Cc: Deputy Ward Manager

SUBJECT LINE: Outcome of DoLS assessment (Status of Patient)

Dear WARD MANAGER NAME

Following the request for a standard authorisation for **PATIENT NAME**, can you please send me the Form 12 (authorised) **or** Form 13 (not authorised) as applicable and a copy of the CQC notification form?

Regards

MHLA

## Mental Health Act Administration Process – SWBH (Sandwell & West Birmingham Hospitals)

- Upon notification of a detention under the Mental Health Act (MHA), the section papers will be received in person for scrutiny by the MHA Administrator (MHAA).\*
- The section papers will be scanned into an electronic patient file on the shared 'City and Sandwell' drive.
- The scanned section papers will be sent to Dr Maganty by the MHAA, for medical scrutiny.
- The section papers are to be stored in a folder in the designated area for each site;
  - City – Liaison Psychiatry Office
  - Sandwell – To be confirmed
- The patient letter and patient information will be hand delivered to the patient or the ward by the MHAA\*\*
- The GP letter is to be sent out by external post by the MHAA.
- All letters are saved to the electronic patient file.
- The ward staff are given a copy of the section 132 Rights and advised to read them to the patient and document patient's acceptance on Unity (SWBH electronic care record system).
- The MHAA will maintain regular communication with ward staff, ensuring they have access to forms H4 (Authority for transfer from one hospital to another under different hospital managers (s19)); and section 23 (discharge from detention).
- Upon transfer the original section papers will be transported with the patient. The MHAA will liaise with the accepting hospital and save a scanned copy of the H4 to the electronic patient file.
- The MHAA will ensure the relevant DASH (data dashboard) is updated during each of the above steps for accurate data collection and circulated to the appropriate leads on a weekly basis.
- A quarterly data report will be presented to the BSMHFT MHLC quarterly for assurance by the Deputy Mental Health Legislation Manager.

### COVID adaptations

\*The section papers will be received electronically.

\*\*The patient letter/information will be sent to the senior ward sister for delivery.