



**Greater Manchester  
Mental Health**  
NHS Foundation Trust

# Mental Health Act Hospital Managers' Hearings Policy – Section 23 Mental Health Act 1983

Greater Manchester Mental Health NHS  
Foundation Trust



Improving Lives

**Mental Health Act Hospital Managers' Hearings Policy – Section 23 Mental Health Act 1983 (as amended by the Mental Health Act 2007 and Code of Practice 2015)**

<b>Document Name:</b>	Mental Health Act Hospital Managers' Hearings Policy – Section 23 Mental Health Act 1983 (as amended by the Mental Health Act 2007 and Code of Practice 2015)
<b>Executive Summary:</b>	Provides direction for mental health act hospital managers on their responsibilities and obligations with regards to reviewing detention & community treatment orders in line with the Code of Practice & Mental Health Act Legislation and for staff involved in their allocation and management.
<b>Executive Lead:</b>	Director of Nursing & Governance
<b>Document Author:</b>	Head of Mental Health Legislation & Policies and Mental Health Act Lead
<b>Document Purpose:</b>	Policy
<b>Target Audience:</b>	All Mental Health Hospital Managers and all trust staff involved in the care of detained service users or those subject to supervised community treatment, and/or those personnel involved in MHA administration and management or who are independent mental health advocates.
<b>Additional Circulation List:</b>	N/A
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<b>Ratified by:</b>	Mental Health Act (and Mental Capacity Act) Compliance Committee
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<b>Cross Reference:</b>	Community Treatment Order Policy (MH002), Policy & Procedural Guidance on Service users Rights (MH04) and all other relevant trust policies
<b>Superseded Docs</b>	Former GMW Hospital Managers Policy & Former MMHSC Hospital Managers Hearing Policy
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## 1. Introduction

Section 23 of the Mental Health Act 1983 enables the board of any NHS Trust to authorise three or more people, under certain conditions, to exercise distinct powers in respect of detained service users.

### 1.1. Purpose

This document sets out the trusts:

- criteria for exercising the right to appoint Mental Health Act Hospital Managers;
- expectations for code of conduct of those identified as Mental Health Act Hospital Managers;
- process for mental health act hospital manager panels;

to ensure compliance with the legal framework and national guidance.

### 1.2. Scope

This document applies trustwide to all trust staff involved in the care of detained service users or those subject to supervised community treatment, and/or those personnel involved in MHA administration and management, mental health act hospital managers or who are independent mental health advocates should be familiar with it.

## 2. Definitions

For the purpose of this document the following definitions have been adopted:

AMHP approved mental health professional

CPA care programme approach

CTO community treatment order

Hospital Managers an independent team of people in hospital whose responsibility it is to ensure the requirements of the Mental Health Act are properly applied (also known as Mental Health Act Managers). Hospital Managers can make decisions related to the detention of service users such as hearing applications to be discharged from a section.

MHACC Mental Health Act Compliance Committee

MHRT Mental Health Review Tribunal

RC responsible clinician

SCT supervised community treatment

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## 3. Duties

### 3.1. Board/Lead Committee

The Trust Board has overall responsibility for compliance with legislation and relevant guidance.

The Trust Board delegates the monitoring and responsibility to the Mental Health Act Compliance Committee, which is responsible for the ratification and monitoring of this policy. The MHACC may request the advice and involvement of other departments as necessary, i.e. Audit, Medical Staffing.

### 3.2. Chief Executive

The Chief Executive has responsibility for ensuring systems and resources are in place to ensure that this policy is effectively implemented by GMMH staff.

### 3.3. Director of Nursing and Governance

The designated Executive lead responsible for the implementation of this policy.

### 3.4. Head of Mental Health Legislation and Policies

The Head of Mental Health Legislation and Policies ensures that GMMH correctly discharges its legal responsibilities in regards to the implementation of this policy.

The Head of Mental Health Legislation and Policies is responsible for the distribution of this policy to Heads of Service who will ensure that the policy is effectively disseminated to staff.

### 3.5. Managers

**Trust Mental Health Act Managers** have responsibility for ensuring legislation is embedded within training, audit and policy requirements. This includes the responsibility for updating and implementing this policy.

**Hospital Managers** have responsibility for ensuring that they are discharging their statutory duties appropriately and in accordance with this policy.

**Line Managers** must ensure that the staff they manage are aware of this policy. Any incidents or breaches of policy should be reported in accordance with the Trust Incident policy and any investigations or actions supported by Line Managers. Line Managers are also required to report any practical issues to the Head of Mental Health Legislation and Policies to facilitate policy change if necessary.

### 3.6. Employees

Mental Health Act administrators are responsible for ensuring the practical operation

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of the policy and escalating any concerns or issues. This includes the timely management of CTOs and ensuring the Trust remains compliant with legislation.

Staff including agency, contractors or anyone providing a service on behalf of the Trust in clinical and non-clinical settings have a responsibility to ensure adherence to this policy and for the correct documentation of the application of this policy in the service user's health records. In some cases, professional codes of conduct will also expect staff to work to a higher standard than the requirements of this policy and staff should refer to those codes for instruction.

All practical issues in implementing this policy should be reported and discussed with Line Managers. A failure to comply with this policy may result in disciplinary action.

### **4. Processes and Procedures**

#### **4.1. Criteria for appointment of Mental Health Act Hospital Managers**

Section 23 of the Mental Health Act 1983 enables the board of any NHS Trust to authorise three or more people, as a mental health act hospital managers' panel, to exercise certain distinct powers in respect of detained service users, provided they are neither an executive director of the board nor an employee or officer of the trust.

The hospital managers' panel may be made up of non-executive directors of the trust or people with suitable experience from outside the trust. In the case of an NHS Foundation Trust, the hospital managers panel can consist of three or more people appointed by the trust, whether or not they are members of the trust itself or of any of its committees or sub-committees. Persons appointed for this purpose are not employees, even if a fee is paid for the duty.

In all cases, the board should ensure that the people appointed for this purpose:

- properly understand their role and the relevant legislation.
- receive suitable training.

Appointments should be made for a fixed period and reappointment should not be automatic, to be preceded by a review of each person's continuing suitability.

In the case of this Trust, a panel consists of three or more people appointed by the trust, whether or not they are members of the trust itself or of any of its committees or sub-committees. Persons appointed for this purpose are not employees, even if a fee is paid for the duty.

#### **4.2. Principles for reviewing a service user's detention or SCT**

The Mental Health Act 1983 does not define either the criteria or the procedure for reviewing a service user's detention or SCT. However, the exercise of this power is subject to the general law and to public law duties which arise from it.

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The Hospital Managers' conduct of reviews must satisfy the fundamental legal requirements of **fairness, reasonableness and lawfulness**:

1. they must adopt and apply a procedure which is fair and reasonable;
2. they must not make irrational decisions, that is, decisions which no body of Hospital Managers properly directing themselves as to the law and on the available information, could have made; and
3. they must not act unlawfully, that is, contrary to the provisions of the 1983 Act, any other legislation and any applicable regulations.

### **4.3. MHA Hospital Managers' Hearings**

The Hospital Managers can undertake a review at any time at their discretion, but must **consider** holding a review:

- when the service user requests a review
- when the service user's Responsible Clinician (RC) submits a report barring a nearest relative's discharge order (in accordance with Section 25(1), Mental Health Act 1983).

The Hospital Managers **must** hold a review when the service user's RC submits a report renewing detention in accordance with Section 20, Mental Health Act 1983 or extending supervised community treatment under Section 20A of the Act.

In those cases where the hospital managers have discretion whether or not to hold a review, they are entitled to take into account whether the Mental Health Review Tribunal has recently considered the service user's case or is due to do so in the near future.

### **4.4. Criteria for MHA Hospital Manager Hearing decisions**

The Act does not define specific criteria to be applied by the Hospital Managers when considering the discharge of a service user who is detained or liable to be detained. The essential yardstick in considering a review application is whether the grounds for admission or continued detention or continued SCT under the Act are satisfied. To ensure that this is done in a systematic and consistent way the review panel should consider the following questions, in the order stated:

**For service users detained for assessment under Section 2 of the Act:**

- 1. Is the service user still suffering from mental disorder?**
- 2. If so, is the disorder of a nature or degree which makes detention for treatment in a hospital appropriate?**
- 3. Is detention in hospital still necessary in the interests of the service user's health or safety, or for the protection of other people?**

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**For other detained service users:**

1. Is the service user still suffering from mental disorder?
2. If so, is the disorder of a nature or degree which makes treatment in a hospital appropriate?
3. Is continued detention for medical treatment necessary for the service user's health or safety or for the protection of other people?
4. Is appropriate medical treatment available for the service user?

**For service users under Supervised Community Treatment (SCT):**

1. Is the service user still suffering from mental disorder?
2. If so, is the disorder of a nature or degree which makes it appropriate for the service user to receive medical treatment?
3. If so, is it necessary in the interests of the service user's health or safety or the protection of other people that the service user should receive such treatment?
4. Is it still necessary for the responsible clinician to be able to exercise the power of recall to hospital, if that is needed?
5. Is appropriate medical treatment available for the service user?

**If the hospital managers are satisfied from the evidence presented to them that the answer to any of the questions set out above is no, the service user should be discharged. However, in all cases, hospital managers have discretion to discharge service users, even if the criteria for continued detention or SCT are met. Managers' panels must therefore always consider whether there are other reasons why the service user should be discharged, despite the answers to the questions set out above.**

#### **4.5. Conduct of reviews where detention is contested**

The review should be conducted so as to ensure that the case for detention or SCT is properly considered against the above criteria and in the light of all relevant evidence. The review panel should have before it sufficient information about the service user's past history of care and treatment, and details of any future plans. The main source of this will be the service user's CPA documentation or care plan. The panel should be fully informed about any history of violence or self-harm, and that a risk assessment is provided, either as a separate document or within the body of the reports provided to the panel.

In advance of the hearing the review panel will receive written reports from the service user's RC and others who are directly involved in the service user's care such as the care co-ordinator, named nurse, approved mental health professional (AMHP), occupational therapist or clinical psychologist. The service user, and their legal representative, will receive copies of the reports unless the Hospital Managers are of the opinion that the information disclosed would be likely to cause serious

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harm to the physical or mental health of the service user or any other individual. In any case information categorized for non-disclosure must be discussed with the service user's legal representative and the information may be disclosed to the service user at the panel's discretion. The service user's nearest relative or most concerned relatives, and any informal carers will be informed of the review, if the service user consents. Relatives and carers will be invited to put their views to the panel in person. If the service user objects to this a suitable member of the professional care team (e.g. social worker) will be asked to include the relative's and/or carer's views in his or her written report.

### **RCs Report:**

The report submitted by the RC should cover the history of the service user's care and treatment and details of his or her CPA including all risk assessments. Where the review is being held because the responsible clinician has made a report under section 20 (renewal of detention), 20A (renewal of SCT) or 21B (return of service user to custody after 28 days) or 25 (report barring discharge) panels should have a copy of the report itself, supplemented by a record of the consultation undertaken by the RC.

In the conduct of the hearing, the Hospital Managers will balance informality against the rigour demanded by the importance of the task. The key points for the Managers to follow are:

- a. The service user should be given a full opportunity, and any necessary help, to explain why he or she wishes to be discharged from detention or SCT
- b. The service user should be allowed to be accompanied by a friend, relative, advocate\* or legal representative of his or her own choosing to help in putting his or her point of view to the panel
- c. The RC and other professionals should be asked to give their views on:
  - whether the service user's continued detention is justified; and
  - the factors on which those views are based
- d. The service user and other parties to the review should, if the service user wishes it, be able to hear each other's statements and to put questions to each other, unless the panel are of the view that this would likely to cause serious harm to the physical or mental health of the service user or any other individual. However, the service user should always be offered the opportunity of speaking to the panel alone, unless, exceptionally, it is considered unsafe to do so.

\* The Independent Mental Health Advocacy Service is due to become available to all detained service users from April 2009.

Whilst the panel must give full weight to the views of all the professionals concerned in the service user's care, its members will not, as a rule, be qualified to form clinical assessments of their own. If there is a divergence of views about whether the service user meets the clinical grounds for continued detention or SCT, especially in relation

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to matters such as risk assessment, the panel should consider an adjournment to seek further medical or professional advice.

Whilst the Hospital Managers are able to adjourn a hearing, in accordance with the above paragraph **there is no power to order a deferred discharge**. The provision that gives the managers the power to discharge a service user from detention – Section 23(2)(a) of the Mental Health Act 1983 - does not give them the power to defer any such discharge. This stands in contrast to the provisions relating to the Mental Health Review Tribunal, which specifically include the power to defer discharge (S72(3), Mental Health Act 1983).

In applying the criteria in paragraph 4.2 above and deciding in the light of them whether or not to discharge the service user, the panel needs to consider very carefully the implications for the service user's subsequent care. The presence or absence of adequate community care arrangements may be critical in deciding whether continued detention is necessary in the interests of the service user's health and safety or for the protection of others. If the panel concludes that the service user ought to be discharged but arrangements for after-care need to be made, they may adjourn the panel, to enable a full CPA/Aftercare meeting to take place.

### **4.6. The MHA Hospital Managers' Panel Decisions**

The MHA Hospital Managers' decision following a review, and the reasons for it should be fully recorded. **Caselaw suggests that the decision of the three MHA Hospital Managers must be unanimous\***. The decision should be communicated immediately, both orally and in writing, to the service user and/or representative, to the nearest relative with the service user's consent, and to the professionals concerned. At least one of the members of the panel should see the service user to explain in person the reasons for the decision. Copies of the papers relating to the review, and the formal record of the decision, will be placed in the service user's case-notes.

\*R v Central and North West London Mental Health NHS Trust, ex parte Tagoe-Thompson (2003)

### **4.7. Procedure for Appeals against continued detention and SCT**

When an appeal is made to the MHA Hospital Managers by a service user or his or her nearest relative, this shall be brought to the immediate attention of the Mental Health Act Administrator, who will make arrangements to provide assistance to the service user/nearest relative. Arrangements will be made by the Mental Health Act Administrator for the MHA Hospital Managers' Panel to convene as soon as possible, usually within fourteen days of the appeal having been received.

The Mental Health Act Administrator will request written reports from the RC (or his/her representative), Primary Nurse and other key individuals directly involved in the service user's care, all of whom will be required to attend the Manager's Hearing

Written reports from the RC, Care Co-ordinator and Nurse and any other professionals should be prepared as quickly as possible so that the service user, his

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or her representative and the Managers have time to consider the details of the case prior to the Hearing. In addition to written reports, the Managers will also require a copy of the current CPA Care Plan and any risk assessments undertaken.

Authors of reports will be informed that the service user and/or his representative will be provided with copies of the reports, and consequently authors should consider whether they would wish to disclose the report. For this Trust there will be a presumption against the provision of information not to be disclosed, given that there is a common law duty to make all available information available to the service user's representative.

Once a date and time for the Managers' Hearing has been confirmed, each participant will be informed of the arrangements by telephone, or e-mail, with all references to service user identity anonymised.

The service users nearest relative will be invited to attend the Hearing unless the service user has indicated that the nearest relative should not be informed of the Hearing or invited.

In the case of hearings concerning SCT, the MHA hospital managers may decide to offer an alternative venue, in cases where attendance at the hospital may not be acceptable to the service user. At present, however, it has not been possible to identify alternative venues which offer an appropriate environment for such hearings.

Written reports will be despatched as soon as possible to the service user and his or her representative. The written reports will be despatched to the MHA Hospital Managers either by post or by hand at least half an hour before the Hearing is scheduled to commence. In cases where the written reports are not available at least 30 minutes prior to the Hearing, the Managers shall have the discretion to adjourn the Hearing pending the availability of written reports.

At the Hearing the Chair of the MHA Hospital Managers' Panel should establish whether the service user has chosen to be represented or otherwise accompanied and that the service user was made aware of the options for such representation. The Chair should also establish whether the service user wishes to speak to the panel alone and he or she should ascertain the service user's views as to the conduct of the Hearing i.e. whether the service user wishes to have all parties present in the Hearing or if he or she would like the parties to be interviewed separately. The Panel, however, have the discretion to request the presence of a nurse(s) throughout the Hearing.

The Chair of the Managers' Panel should inform all participants of the procedure for the Hearing, including the usual order of the interviews, together with the discretion to allow participants to be interviewed alone and/or in the presence of others. The interview procedure will normally follow the order of Responsible Clinician, AMHP/Care Co-ordinator, Nurse, service user and/or representative. The service user and his or her representative, whether a legal representative or otherwise, have the right to put questions to all participants in accordance with the principles of

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Natural Justice.

After the MHA Hospital Managers have made their decision, the Chair of the Managers' Panel should see the service user and convey the decision to the service user and/or service user's representative. The Chair should complete the appropriate documentation and the Mental Health Act Administrator will send a copy of the Managers' decision to the service user and all the participants. At the conclusion of the Hearing the MHA Hospital Managers will return all reports and documents pertaining to the Hearing to the Mental Health Act Administrator. The Mental Health Act Administrator will ensure that a copy of all the papers relating to the Hearing and a copy of the Managers' decision are placed in the service user's case-notes.

## 4.8. The MHA Hospital Managers' review of renewal of detention

### 1. Contested Renewals:

Renewals of detention, (i.e. sections 3, 37 and 47 and SCT), are made by the RC in accordance with Section 20. Once a Report to Renew Detention or SCT has been submitted, the Mental Health Act Administrator will make arrangements for the MHA Hospital Managers to convene. The format for a Contested Renewal Review will follow that for an Appeal. Reports recommending continued detention or SCT must be received at least three weeks prior to the expiry of the period of detention, so that the review may be held as closely as possible to the expiry date of the section.

### 2. Uncontested Renewals:

If a service user's detention or SCT is renewed and the service user has indicated that he or she does not wish to contest this, the review panel will follow the same procedure as for a contested renewal. However there is discretion for the Managers to deal with an uncontested renewal on the basis of the reports alone if they have sufficient written evidence by the service user that they do not wish to contest their renewal. The mere fact that service users have not objected should not be taken as evidence that they agree.

In cases where there may be some uncertainty as to the service user's views, for example where the service user states he or she does not wish to contest the renewal but that he or she does not wish to remain in hospital, the Renewal Review will follow the procedure for a Contested Renewal. The Managers will require the attendance of the RC, AMHP/Care Co-ordinator and Nurse and any other professionals involved in the care and treatment of the service user.

### 3. RC's Record of Consultation re: Renewal

The panel will have a copy of the RC's Report under Section 20 or 21A before them. This will be supplemented by the record of consultation undertaken by the RC in accordance with Section 20(5)(A) of the 1983 Act.

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## 4.9. MHA Hospital Managers' Hearings & Mental Health Review Tribunals

It is the policy of this Trust that a Managers' Hearing will always be held at a service user's request unless there has been a Managers' Hearing or MHRT in the last 28 days or a MHRT is due in the next 28 days. Where a service user has had a Managers' Hearing and submits another application, the next Hearing will be held 28 days after the last hearing. However, the Managers will have discretion whether to hear appeals irrespective of the length of time between hearings since, for example, there may be occasions when there has been a significant change in the service user's mental state which would require fresh consideration

## 4.10. MHA Hospital Managers' Review of RC's Barring Order

It is the policy of the Care Trust that where a RC bars a nearest relative's order to discharge a detained service user (Section 25(1)) the MHA Hospital Managers will **always** hold a Hearing, whether or not there has been a Hearing or MHRT in the last 28 days or a MHRT due in the next 28 days. This is because of the additional criterion to be considered, namely, dangerousness.

## 4.11. MHA Hospital Manager Appraisals

MHA Hospital Managers will receive biannual appraisals to monitor performance and to ensure that they are following this policy and guidance set out in the MHA Code of Practice.

## 5. Training Requirements

Training is part of the Hospital Manager's contractual agreement and the Trust will ensure that members of the MHA Hospital Manager's panel receive suitable training to carry out their role. The conditions of the contractual agreement are reviewed on a regular basis.

## 6. Monitoring

Minimum Requirement	Frequency	Process for monitoring	Evidence	Responsible Individual(s)	Response Committee(s)
Hospital Managers' hearings activity will be monitored & reported upon and a review process instigated in the event of non compliance	Annual	Review of Report	MHA Annual Report	Head & MHA Manager	MHACC

## 7. Resource/Implementation Issues

Staff should be supported to prepare reports, inform and support service users to access and understand the Hospital Manager Process. Staff should be supported to attend hearings and reviews to which they have contributed and have knowledge.

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Resourcing for recruiting, training, appraising and managing hospital managers will be required to support the implementation of this policy.

## 8. Risk Issues

Correct decisions made by Hospital Managers are based on the evidence/ information provided by the clinical teams. Hospital managers may discharge detained service users where the detention criteria is not evidenced.

## 9. Requirements, Supporting Documents and References

### 9.1. Requirements

- Mental Health Act: Code of Practice 2015
- Mental Health Act 1983 as amended by the Mental Health Act 2007, Department of Health, 2008

### 9.2. Supporting Documents

- Community Treatment Order Policy (MH002),
- Policy & Procedural Guidance on Service users Rights (MH04)
- and all other relevant trust policies.

### 9.3. References

- Code of Practice to the Mental Health Act 1983 [2015] Chapters 37 and 38  
Mental Health Act 1983 as amended by the Mental Health Act 2007, Department of Health, (2008)
- R v Central and North West London Mental Health NHS Trust, ex parte Tagoe-Thompson (2003)
- Reference Guide to the Mental Health Act 1983, 2015.

## 10. Subject Expert and Feedback

Mental Health Act Manager  
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## 11. Review

This document will be reviewed every five years or earlier should a change in legislation or circumstance dictate.

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