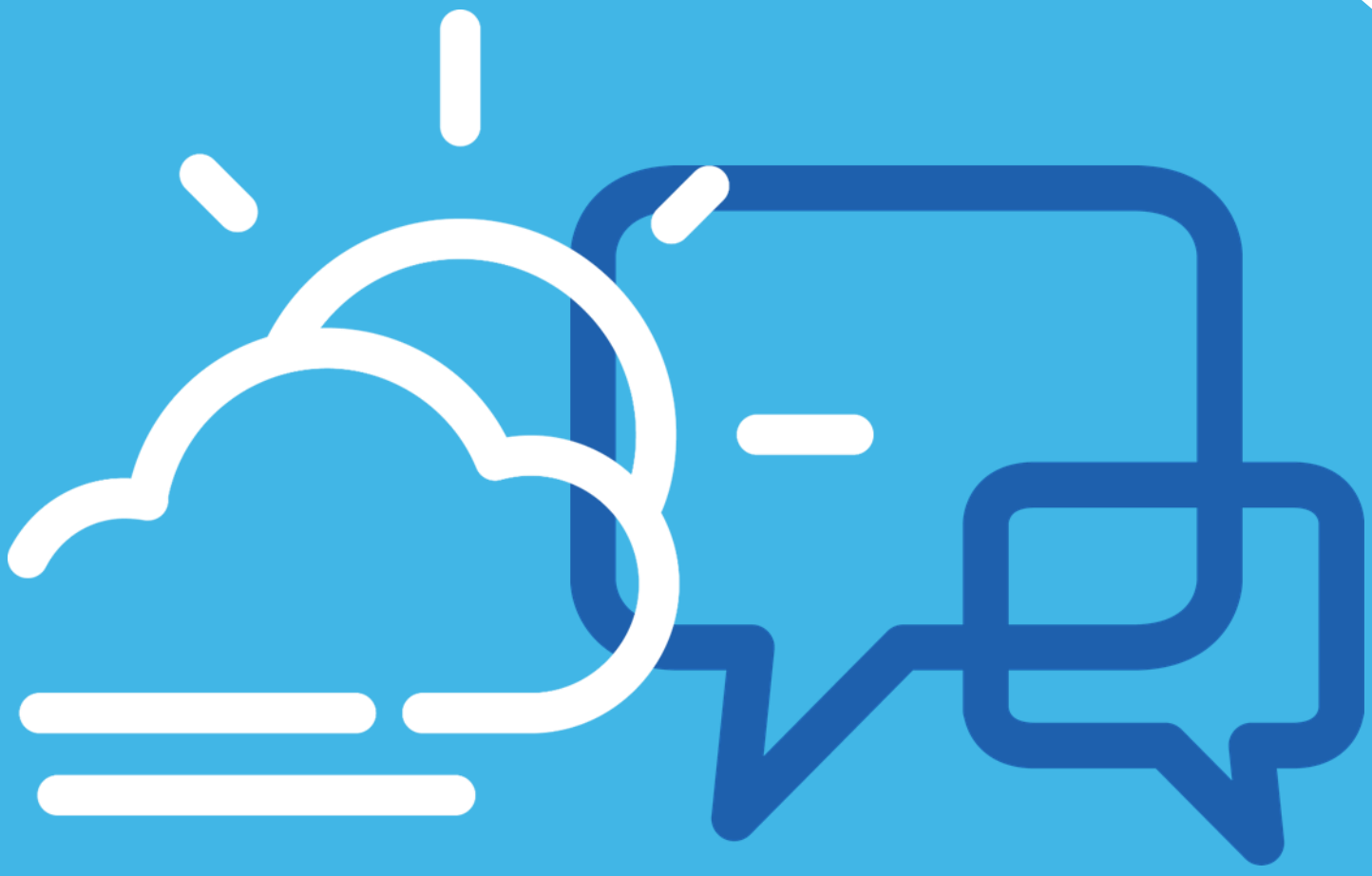
NHS
Greater Manchester Mental Health
NHS Foundation Trust

Section 17 (Leave of Absence) Policy

Greater Manchester Mental Health NHS Foundation Trust



Improving Lives

Document Name:	**Section 17 (Leave of Absence) Policy**
Executive Summary:	To ensure compliance with the Mental Health Act section 17 and the Code of Practice Chapter 27. Section 17 provides for the responsible clinician (RC) of a patient to grant leave of absence from hospital for a specified or indefinite period and subject to such conditions as are considered necessary. Section 17 leave provides the only lawful authority for a detained patient to be absent from the detaining hospital. The detaining hospital is the organisation which has the power to detain the patient and, consequently, leave is necessary before a patient may attend another hospital, including a hospital which shares the same site as the detaining hospital. This version includes updates made by the MHA Code Of Practice 2015.
Executive Lead:	Executive Director of Nursing and Governance
Document Author:	Chris Thompson, MHA Manager, Manchester and Trafford Division
Document Purpose:	Policy
Target Audience:	Nursing staff, medical staff, Care-coordinators, MHA administration staff
Additional Circulation List:	None
Date Ratified:	30/11/18
Ratified by:	Mental Health Act and Mental Capacity Act Compliance Committee
Consultation:	Mental Health Act and Mental Capacity Act Compliance Committee
Cross Reference:	Related trust policies and procedures including the AWOL Policy
Superseded Docs	GMW Section 17 Leave of Absence Policy MMHSC Section 17 Leave of Absence Policy
Date of Equality Impact Assessment:	20/02/2019
Board Objective Reference:	1: To promote recovery by providing high quality care and delivering excellent outcomes 2: To work with service users and carers to achieve their goals 3: To engage in effective partnership working
CQC Regulation Reference:	*CQC Fundamental Standards Regulations -* *9: Person-centred care* *10: Dignity and respect* *12: Safe care and treatment*
Risk Register Reference:	2819

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Document Status	This is a controlled document. Whilst this document may be printed, the electronic version posted on the Trust intranet is the controlled copy.

Contents

1. Introduction

This policy relates to Section 17 of the Mental Health Act 1983 and is guided by Chapter 27 of the Code of Practice to the Mental Health Act (2015) and Jones' Mental Health Act Manual (Twentieth Edition).

Section 17 provides for the responsible clinician (RC) of a patient to grant leave of absence from hospital for a specified or indefinite period and subject to such conditions as are considered necessary. Section 17 leave provides the only lawful authority for a detained patient to be absent from the detaining hospital. The 'detaining hospital' is the organisation which has the power to detain the patient and, consequently, leave is necessary before a patient may attend another hospital, including a hospital which shares the same site as the detaining hospital.

Except for certain restricted patients no formal procedure is required to allow patients to move within a hospital or its grounds. Such 'ground leave' within a hospital may be encouraged or, where necessary, restricted, as part of each patient's care plan.

The Trust's solicitors have advised that a 'narrow site' definition should be applied. Therefore, all leave beyond the boundaries of the unit must be covered with Section 17 Leave. This excludes access to smoking areas which are within the grounds of the unit itself.

Section 17 leave is also necessary for patients to attend services at those acute hospitals which share the same site as this Trust. In the event that a patient is required to attend at an acute hospital, which has not been anticipated during regular patient review, the responsible clinician may authorise Section 17 leave by telephone, in urgent cases, with the record of leave to be made at the next available opportunity.

1.1 Purpose

The purpose of this policy is to support staff in the effective implementation of s.17 Leave of Absence, to ensure service users' rights are upheld and that staff act in the service user's best interests at all times when making decisions regarding s.17 leave of absence under the MHA 1983.

1.2 Scope

This policy applies to all health and social care staff, including bank/agency staff and volunteers, working in GMMH NHS Trust and its partner organisations who are working with vulnerable people who may have the capacity to make some of their own decisions.

2. Definitions

Mental Health Act (MHA) - The Current Act was first introduced in 1983 and further amended in 2007. The MHA sets out how you can be treated if you have a mental disorder.

'Patient' is the term used for a service user throughout this document to reflect the language of the MHA and the CoP.

Responsible Clinician (RC) – The Responsible Clinician has overall responsibility for the care and treatment of patients being assessed and treated under the Mental Health Act.

The Mental Health Act and Mental Capacity Act Compliance Committee - (MHACC) – The Committee with responsibility for overseeing the Trust's compliance with the Mental Health Act and its Code of Practice and the mental Capacity Act including Deprivation of Liberty safeguards (DoLS).

The Trust is Greater Manchester Mental Health NHS Foundation Trust (GMMH).

3. Duties

3.1 Board/Lead Committee

The Mental Health Act and Mental Capacity Act Compliance Committee (MHACC) are responsible for the ratification and monitoring of policy.

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 Medical Director

The Executive Medical Director is responsible for dissemination to medical staff.

3.5 Head of Mental Health Legislation and Policies

The Head of Mental Health Legislation and Policies is responsible for the review of this policy.

3.6 Heads of Service

Heads of services to ensure compliance within their Divisions.

3.7 Managers

All managers to ensure compliance within their locality.

3.8 Clinical Staff

All clinical staff have a responsibility to comply with this policy.

3.9 MHA Department

Locality MHA Managers are responsible for providing appropriate advice and support in relation to administration processes for all mental health legislation, which is easily available to all clinicians and practitioners in the Trust throughout office hours.

4. Processes and Procedures

4.1 Principles of Section 17 Leave

The Section 17 Leave formal procedure must be followed for all leave beyond the boundaries of the unit to which the patient is detained. Section 17 does not apply to informal patients.

Only the patient's RC can grant leave of absence to a detained patient. RCs cannot delegate the decision to grant leave of absence to anyone else. In the absence of the RC, permission can be granted only by the approved clinician who is, for the time being, acting as the patient's RC, and is not professionally accountable to another approved clinician at the time when leave is granted. This precludes leave of absence being granted by a doctor in training.

When considering whether to grant leave of absence for more than seven consecutive days, or extending leave so that the total period is more than seven consecutive days, RCs must first consider whether the patient would be suitable for supervised community treatment (SCT). This does not apply to restricted patients, nor, in practice, to patients detained for assessment under Section 2, who are not eligible for SCT.

The requirement to consider SCT does not mean that longer term leave cannot be used, if that is the more suitable option, but the RC will have to show that both options have been duly considered.

The granting of Section 17 leave may not impose a condition which would require the hospital managers to fund a placement or other service and, consequently the RC must first establish that the necessary services or accommodation are available.

4.2 Restricted Patients

Any proposal to grant leave has to be approved by the Secretary of State or the Courts, (dependent upon section), who should be given as much notice as possible together with full details of the proposed leave.

- Any proposal to grant leave to a restricted patient has to be approved by the Secretary of State for Justice, (CoP: 27.39).
- Where the courts or the Secretary of State have decided that restricted

patients are to be detained in a particular unit of a hospital, those patients will require the Secretary of State's permission to take leave of absence to go to any other part of that hospital as well as outside the hospital, (CoP: 27.40).

- For routine medical appointments or treatment, the Secretary of State's permission will be required. It is accepted that there will be times of acute medical emergency such as heart attack, stroke, or penetrative wounds or burns where the patient requires emergency treatment. There may also be acute situations which, while not life threatening, still require urgent treatment, e.g. fractures. In these situations, the RC may use their discretion, having due regard to the emergency or urgency being presented and the management of any risks, to have the patient taken to hospital. The Secretary of State should be informed as soon as possible that the patient has been taken to hospital, what risk management arrangements are in place, be kept informed of developments and notified when the patient has been returned to the secure hospital, (CoP: 27.41).
- As per CoP: 27.42, further information and guidance on further types of short term section 17 leave, such as compassionate or holiday leave, is available at the following link: https://www.gov.uk/government/publications/leave-application-for-restricted-patients

4.3 Short – Term Leave

The RC may authorise short-term leave to the local area, to be managed by other staff. For example, leave may be given for a two-hour period to the local area, with how the actual two hour period is to be used being determined by nursing staff. The parameters of the leave must be set out as clearly as possible e.g. the particular places to be visited, any restrictions on the time of day and the circumstances in which leave should not go ahead.

4.4 Longer Periods of Leave

Whilst all periods of Section 17 leave should be considered as an integral part of the patient's care plan under the Care Programme Approach, longer term leave, i.e. for seven days or longer, must be considered by the multi-disciplinary team, involving the patient and any carers or relatives, especially if the arrangements for leave will require the patient to reside with a carer or relative.

When a patient does not consent to carers or other people being consulted about the plans for leave, the responsible clinician, in discussion with the multi-disciplinary team, should reconsider whether it is safe and appropriate to grant such leave.

4.5 Factors to Consider For All Periods of Section 17 Leave

The CoP: 21.8 requires that the following factors are considered before leave of absence is granted:

- the potential benefits and any risks to the patient's health and safety of granting or refusing leave;

- the potential benefits of granting leave for facilitating the patient's recovery;
- balancing these benefits against any risks that the leave may pose in terms of the protection of other people, (either generally or particular people);
- any conditions which should be attached to leave e.g. requiring the patient not to visit particular places or persons;
- any child protection and child welfare issues;
- the patient's wishes, and those of carers, friends and others who may be involved in any planned leave;
- what support the patient would require during their leave of absence and whether it can be provided;
- ensure that any community services which will need to provide support for the patient, are involved in the planning of leave and that any such services are made aware of the details and conditions of leave;
- ensure that the patient is aware of any contingency plans put in place for their support, including what they should do if they think they need to return to hospital; and
- in the case of mentally disordered offenders, consider whether there are any issues relating to victims which impact on whether leave should be granted and any conditions to be attached to the leave.

4.6 Revoking Leave of Absence

The RC may revoke leave at any time if he or she considers this to be necessary in the interests of the patient's health or safety or for the protection of other people. The RC must consider very seriously the reasons for recalling a patient and the effects this may have on him or her. For example, a refusal to take medication would not on its own be a reason for revocation; the RC would have to be satisfied that this was necessary in the patient's interests or for the safety of others. In the event that a patient refuses to return to hospital willingly, the RC must arrange for a notice in writing, revoking the leave, to be served on the patient or on the person for the time being in charge of the patient. The reasons for recall should be fully explained to the patient and a record of this explanation should be made in the patient's record.

Any appropriate relatives and friends, especially where the patient is residing with them whilst on leave, and any other professionals in the community who need to know, should have easy access to the patient's RC, if they feel consideration should be given to the return of the patient to hospital before his or her leave is due to end.

4.7 Absence Without Leave

If a patient does not return from planned leave either willingly on request by the RC, or after the RC has served a notice of recall, he or she becomes 'Absent Without Leave' (AWOL). Section 17 (5) requires that a patient cannot be recalled from leave after a period of twelve months from the first day that leave was granted, or after the authority to detain has lapsed, whichever is the earlier. If the patient returns after an absence of more than 28 days the patient is required to be examined by the RC in

order to establish whether the patient should be further detained. This must be carried out by the RC within 7 days of the patient's return. See AWOL Policy for further information.

4.8 Renewal of Detention Whilst the Patient is On Leave

The Court of Appeal ruled in 1999 that it was not necessary for a patient to be an 'inpatient' at the time that detention was renewed, but that it was sufficient for the patient's care plan to include periods of treatment in hospital. Subsequent cases have broadened the renewal criteria even further, with the most recent case to date ruling that it is an 'illogical gloss' on Section 20(4) of the MHA 1983 to read 'treatment in hospital' to imply an element of inpatient treatment. Therefore, in order for the renewal of a patient's detention to be lawful when s/he is on leave, s/he must be receiving, or must be expected to receive, hospital treatment, (including, for example, attending hospital-based outpatient appointments or ward rounds), and this must make up a significant component of his or her care plan.

4.9 Information for Informal patients on Leave

Informal patients must be allowed to leave if they wish, unless they are to be detained under the act. Both the patient and where appropriate, their carer and advocate should be aware of this right and information provided in a format and language the patient understands, (please see Policy and Procedural Guidance on Patients' Rights, Appendix 3 for the relevant leaflet). Failure to do so could lead to a patient mistakenly believing that they are not allowed to leave hospital and could result in an unlawful deprivation of their liberty and a breach of their human rights.

4.10 Recording and Documentation

All instances of Section 17 Leave must be recorded on the Trust pro-forma designed for this purpose. The use of Section 17 will be the subject of periodic audit.

5. Training Requirements

Training is not required for this document.

6. Monitoring

Minimum Requirement	Frequency	Process for monitoring	Evidence	Responsible Individual(s)	Response Committee(s)
Compliance	Annual	Audit	Audit Report	Christine Diamond	MHACC

7. Resource/Implementation Issues

There are no resource/implementation issues for this policy.

8. Risk Issues

Non-compliance could lead to claims and breach of the statutory framework.

9. Requirements, Supporting Documents and References

9.1 Requirements

Board Objective Reference:	1: To promote recovery by providing high quality care and delivering excellent outcomes 2: To work with service users and carers to achieve their goals 3: To engage in effective partnership working
CQC Regulation Reference:	*CQC Fundamental Standards Regulations -* *9: Person-centred care* *10: Dignity and respect* *12: Safe care and treatment*
Other obligations:	*Legislation including the Mental Health Act Code of Practice.*

9.2 Supporting Documents

- AWOL Policy: https://newintranet/Policies/gmmh-policies/risk-management/PublishingImages/Pages/awol/AWOL%20Policy.pdf
- Policy and Procedural Guidance on Patients' Rights: https://newintranet/Policies/gmmh-policies/mental-health/PublishingImages/Pages/patients_rights_policy/Patients%20rights%20policy.pdf

9.3 References

- Mental Health Act Code of Practice: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF
- Gov.uk: https://www.gov.uk/government/publications/leave-application-for-restricted-patients

10. Subject Expert and Feedback

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11. Review

This document will be reviewed in five years or sooner in the light of organisational, legislative or other changes.

Appendix 1 – Section 17 Leave Flowchart