



**Greater Manchester
Mental Health**
NHS Foundation Trust

Policy and Procedural Guidance on Patients' Rights, Section 132, Mental Health Act 1983

Greater Manchester Mental Health NHS
Foundation Trust



Improving Lives

Policy and Procedural Guidance on Patients' Rights

Document Name:	Policy and procedural guide on Patients' Rights Section 132, Mental Health Act 1983
Executive Summary:	The Act requires Hospital Managers to take steps to ensure that patients who are detained in hospital under the Act, or who are on supervised community treatment (SCT) understand important information about how the Act applies to them. This must be done as soon as practicable after the start of the patient's detention, or SCT. This information must also be given to SCT patients who are recalled to hospital. This version includes references to the 2015 MHA Code of Practice. This version has harmonised previous GMW and MMHSC policies
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1. Introduction

The Act requires Hospital Managers to take steps to ensure that patients who are detained in hospital under the Act, or who are on supervised community treatment (SCT) understand important information about how the Act applies to them. This must be done as soon as practicable after the start of the patient's detention, or SCT.

This information must also be given to SCT patients who are recalled to hospital.

Section 132 of the Act places a duty upon hospital managers to provide certain information to patients who are detained in hospital, and to their nearest relative.

Information must be given to the patient, **both orally and in writing**, these are not alternatives. Those providing information to patients should ensure that all relevant information is conveyed in a way that the patient understands.

It is not sufficient to repeat what is already written on an information leaflet.

The Hospital Managers must take steps to ensure that patients who are detained, understand:

- which Section of the Act for the time being authorises their detention and the effects of that Section;
- their right to apply to the Mental Health Review Tribunal;
- the powers of the Responsible Clinician, Hospital Managers and their Nearest Relative to discharge them (for restricted patients, subject to the agreement of the Secretary of State);
- the right to ask the Hospital Managers to review their case;
- the role of the Care Quality Commission and their right to meet a Commissioner in private during a Commission visit, including their right to make a complaint to the Commission;
- the right to give or withhold consent to treatment, including the right of the Responsible Clinician to treat without consent under the provisions of Part IV of the Act;
- the ways in which they may make a complaint in accordance with the hospital complaints procedure and the GMMH Customer Care Service;
- their right to receive assistance from an Independent Mental Health Advocate.

1.1 Purpose

The Act requires Hospital Managers to take steps to ensure that patients who are detained in hospital under the Act, or who are on supervised community treatment (SCT), understand important information about how the Act applies to them. This must be done as soon as practicable after the start of the patient's detention, or

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SCT. This information must also be given to SCT patients who are recalled to hospital. This version includes references to the 2015 MHA Code of Practice.

1.2 Scope

This policy applies to all health and social care staff, including bank/agency staff and volunteers to ensure that patients under the MHA have their rights read in a timely manner and are informed of their rights regularly.

2. Definitions

CPA – Care Programme Approach

CTO – Community Treatment Order

ECHR – European Commission of Human Rights

IMHA – Independent mental health advocate

MHA – Mental Health Act

SCT – Supervised Community Treatment

SOAD - second opinion appointed doctor

3. Duties

Ward staff to ensure that patients are given their rights and the document is then uploaded onto the clinical record promptly in accordance with the ascribed procedure.

Care coordinators must ensure that patients subject to a Community Treatment Order are given their rights and that these are then uploaded onto the clinical record promptly in accordance with the ascribed procedure.

4. Processes and Procedures

4.1 Supervised Community Treatment

Patients who are subject to a Community Treatment Order (CTO) have the same right to receive information about the purpose and effect of a CTO, including the effect of the statutory and any discretionary conditions. The patient must also be informed of the circumstances under which they may be recalled to hospital.

Patients subject to SCT must also be informed about the ways in which the consent to treatment regulations apply to CTOs under Section 58a of the Act. Patients subject to SCT must also be informed that their case will be referred to the Mental Health Review Tribunal automatically if their CTO is revoked, and that there will be a Hospital Managers' Review if their CTO is extended.

The Care coordinator is responsible for reading the rights to the patient subject to a Community Treatment Order and for uploading the document onto the clinical record as per [Appendix 2](#).

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4.2 Right of Appeal to the Mental Health Review Tribunal and Hospital Managers

Hospital Managers should ensure that patients are offered assistance to request a Hospital Managers' Hearing or make an application to the Tribunal. They should also be told:

- how to contact a suitably qualified legal representative and to be given assistance to do so;
- that free legal aid may be available;
- that advocacy services may be available, including the statutory advocacy service provided by the IMHA.

4.3 Keeping Patients Informed of their Rights

Information for detained patients is available in written form through the issue of statutory, and other, leaflets and guidance. This information is available in several languages.

The patient's named/primary nurse has responsibility for ensuring that each patient receives their rights in written form and through oral explanation.

For patients subject to a Community Treatment Order, care coordinators are responsible for providing rights in written form and through oral explanation.

Rights must be repeated at regular intervals.

- **For patients detained under Section 2, rights must be repeated weekly.**
- **For patients detained under section 3, SCT and longer term forensic sections such as section 37 and section 47, rights must be repeated monthly.**

The Mental Health Act Administrator will issue, **within five working days of admission**, a standard letter to each patient, containing a summary of the information which must be provided under the Act and Code of Practice 2015, together with information concerning their right to receive support from an Independent Mental Health Advocate ([Appendix 1](#)). The process of providing information and an explanation of patients' rights shall be an ongoing process, repeated at regular intervals when:

- the patient wishes to apply to the Mental Health Review Tribunal or has a fresh right of appeal
- the patient wishes to apply to the Hospital Managers;
- the patient's consent to treatment is required;
- a significant change in their treatment is being considered;
- there is to be a CPA review (or its equivalent);
- renewal or extension of SCT has been authorised.

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The giving of patient's rights will be documented by the responsible nurse on the documentation approved for this purpose ([Appendix 3](#)), including information about whether the rights appear to have been understood and, if not, when rights are repeated.

The document must then be uploaded onto Paris as per the process described in [Appendix 2](#).

4.4 Information for Nearest Relative

When a patient detained under the Act or SCT is given rights information, they must be told that the written information will be given to their nearest relative, including whenever the patient is discharged, transferred or their detention is renewed or SCT extended, **unless the patient or their nearest relative object to this information being provided.**

In almost all cases, information is not to be shared if the patient objects. Case law has established that disclosure of information to the nearest relative may breach the patient's right to privacy under the European Convention of Human Rights. Consequently, care must be taken to ensure that sharing of information with the nearest relative would not have a detrimental impact on the patient which is disproportionate to any advantage to be gained from sharing the information. Before disclosing information to nearest relatives without a patient's consent, the person concerned must consider whether the disclosure would be likely to:

- put the patient at risk of physical harm or financial or other exploitation;
 - cause the patient emotional distress or lead to a deterioration in their mental health;
- or
- have any other detrimental effect on their health or wellbeing and, if so, whether the advantages to the patient and the public interest of the disclosure, outweigh the disadvantages to the patient, in the light of all the circumstances of the case.

4.5 Communication with Others Nominated by the Patient

A patient may wish to nominate other persons to be involved in, or notified of, decisions related to their care and treatment, including an advocate, legal representative, friend or carer. A request for involvement of a person other than the nearest relative should normally be accepted, unless there are good reasons not to do so.

4.6 Information for Informal Patients

Whilst the Mental Health Act does not impose any duties to give information to informal patients, a separate information leaflet has been devised for this purpose ([Appendix 4](#)) since failure to do so could lead to a patient mistakenly believing that they are subject to restrictions upon their freedom of movement and contacts.

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5 Training Requirements

N/A

6 Monitoring

Minimum Requirement	Frequency	Process for monitoring	Evidence	Responsible Individual(s)	Response Committee(s)
Appropriate implementation of this policy	Annual	MHA compliance Audit	Audit report	MHA Managers	MHACC

7 Resource/Implementation Issues

N/A

8 Risk Issues

Possible breach of article 5 of the ECHR

9 Requirements, Supporting Documents and References

9.1 Requirements

Board Objective Reference:	1 – To promote recovery by providing high quality care & delivering excellent outcomes 2 – To work with service users and carers to achieve their goals 6 – to achieve sustainable financial strength and be well governed
CQC Regulation Reference:	Regulation 13: Safeguarding Service Users from Abuse & Improper Treatment
Other requirements:	Legislation including Mental Health Act

9.2 Supporting Documents

Related Trust policies and procedures including:

- Consent to Treatment Policy (MH03),
- Community Treatment Order Policy (MH02),
- CPA Policy (CL35),
- Information Governance Policy (IG06).

9.3 References

MHA Code of Practice (2015)

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10 Subject Expert and Feedback

Chris Thompson, MHA Manager. Tel: 0161 625 8344

11 Review

This policy will be reviewed by the author or designated person once every three years or earlier should a change in circumstance dictate.

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Appendix 1 – Letter to detained Patient

Letter to detained Patient Re: Assistance available from the Independent Mental Health Advocacy Service
Mental Health Act Office

Tel:
Date:

To:

Dear

The Independent Mental Health Advocacy Service

I am writing to confirm that you have received and understood your rights following your recent detention under the Mental Health Act and to make you aware of the statutory advocacy service – the Independent Mental Health Advocate.

The role of the Independent Mental Health Advocate is to:

- help detained patients understand their rights;
- help detained patients understand the rights which other people have in relation to your care and treatment, for example, your Nearest Relative;
- help you to understand the basis of your detention;
- help you to understand any conditions or restrictions which apply to you;
- help you to understand the basis for treatment to be given to you and the safeguards and rights which you have under the treatment regulations; and
- help and support you to exercise your rights, including representing you at meetings with your care team and any other meetings with hospital staff, (this does not affect your right to legal representation if you wish to appeal against detention or your entitlement to legal aid).

If you would like an Independent Mental Health Advocate to come and speak to you, please ask a member of nursing staff. Alternatively you can ask your doctor or any other member of your care team.

Following your detention under the Mental Health Act you should already have received an explanation of your rights which are set out overleaf. If you have any further queries please ask a member of nursing staff or other member of your care team.

Yours sincerely,

Mental Health Act Office
cc Ward Manager

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Appendix 2– Patient's Rights Process and Flow Chart

The Act requires hospital managers to take steps to ensure that patients who are detained in hospital under the Act, or who are on supervised community treatment (SCT), understand important information about how the Act applies to them. This must be done as soon as practicable after the start of the patient's detention or SCT. Those providing information to patients should also ensure that all relevant information is conveyed in a way that the patient understands.

Rights must be provided to patients on a regular basis:

Section 2; Weekly

Section 3, 35, 37, 47, 48; monthly

If the patient refuses their rights then this must be recorded on the form.

Go to the Green Legal tile in Paris and choose MHA Summary tile. Look for MHA-Patient rights V2 section. Insert a row to record a new entry, it will pre-populate with your name, current date, time and active MHA episode. Tick the "informed of rights" box, click accept changes and save.

If you have scanned a copy of the patient's rights form, you can upload in this section. Click upload patient's rights form button and a file browser will open to allow you find the file in your drive.

The Patients Rights form is now visible on Paris.

A fresh explanation of rights should be considered in particular where:

- The patient is considering applying to the Tribunal or are requesting a Hospital Managers hearing.
- The rules in the act about their treatment changes or there is a significant change in treatment
- Renewal of detention is being considered or detention has been renewed.

Further reading:
1: Trust's Patient's Right's Policy
2: MHA Code of Practice: paragraphs 4.9-4.30

Appendix 3 – Record of informing patients of their rights

**Mental Health Act 1983, Mental Health Act 2007 - Detained Patients and SCT Patients
Record of Informing Patients of Their Rights**

Patient's Name: Ward:

The patient is detained under section: (enter section number)

or
The patient will be/ is subject to SCT: (tick if applicable)

Part 1 or part 2 to be completed in all cases

Part 1:

1. The patient was informed verbally of his/her rights as set out in the Code of Practice, Mental Health Act 1983, Chapter 2. The patient was given a copy of the information leaflet relevant to the section under which he/she is detained/SCT.

and

2. *(except for patients on section 4 and section 5)* The patient was informed verbally of his/her right to an Independent Mental Health Advocate (IMHA) and how to obtain one. The patient was given a copy of the IMHA leaflet giving contact information for the relevant IMHA provider.

and

3. The patient was able to understand his/her rights

and

4. The patient has/has not* agreed that his/her nearest relative may be informed

Name and address of nearest relative:

Relationship of nearest relative to the patient:

Date and time at which patient was informed of his/her rights:

Date: Time:

Staff member

Patient:

Name		Name	
Designation		Signature	
Signature			

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Part 2:

Attempts were made to inform the patient of his/her rights but the patient was incapable of understanding/unwilling to receive* the information

Date(s) and time(s) at which attempts were made to inform the patient of his/her rights:

Attempts	Date	Time	Staff Name	Designation	Signature
1					
2					
3					
4					

Part 3:

Patients whose first language is other than English

If the patient was unable to understand the information in English:

- 1 Was an interpreter utilised? **YES / NO***
- 2 Was the patient given the leaflet(s) in their own language? **YES / NO***

* Delete as applicable

Staff Name	
Designation	
Signature	

Completed form to be uploaded onto the clinical record

- to review their cases

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Appendix 4 – Leaflet for Informal (Voluntary) Patients

Leaflet to be issued to informal (voluntary) patients on admission and when regarded to informal status from detention.

Rights Leaflet – Informal (Voluntary Patients)

1	Patient's Name	
2	Responsible Clinician	
3	Ward	

What is an informal patient?

If you have agreed to come into hospital voluntarily or, after a period of detention under a section of the Mental Health Act “section”, and your doctor discharges you from the section, then you become an informal patient.

If you have been discharged from a section of the Mental Health Act, you will receive a letter from the Hospital together with a copy of this leaflet.

As an informal patient you have the same rights as any other voluntary hospital patient, and this leaflets explains what those rights are.

Your Right to Leave Hospital

As an informal patient you have the freedom to leave the ward area and, if you wish, to leave hospital. However, as we are responsible for your safety and care, it is important that you always tell a member of nursing staff if you wish to leave hospital.

If you wish to leave the ward, or the hospital, and we have concerns about your health, we will discuss this with you and may ask you to wait until you have seen the doctor.

If you wish to leave hospital and a nurse or doctor believes that you are at risk to yourself, or other, you can be kept in hospital, using powers under Section 5 of the Mental Health Act, until you have been assessed by a senior psychiatrist.

If you wish to go home overnight or for a longer period, please discuss this with a member of our nursing staff. If you go missing without telling a member of the nursing staff, we will have to use our “missing patients” policy, which means that we will have to try and find you to make sure you are safe and well.

Your Rights Concerning Treatment

You have come into hospital voluntarily to receive care and treatment, and we will always involve you in discussions about what treatment and care will be provided.

The doctors responsible for your care may feel that a particular medication, treatment or therapy will help you. This will be discussed with you and you will be given information about the treatment which is proposed.

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Treatment may only be given to you with your consent, unless there is evidence that you lack the capacity to consent. You may withdraw your consent at any time. If you do not have capacity to consent to a particular treatment then treatment may only be given to you if it is found to be in your best interest, as regulated by the Mental Capacity Act 2005. If you have been granted a Welfare Lasing Power of Attorney (LPA) to a friend or a member of your family, we will have to discuss any treatment with them before treatment can be given. If it proved necessary to deprive you of your liberty, in order to give treatment, then we will have to arrange an assessment under the Mental Health Act. Also, if you have made an Advance Directive, refusing certain types of treatment, then we will not be allowed to give the treatment unless you are detained under the Mental Health Act. If the treatment is ECT we may not give the treatment unless it has been authorised by a second opinion appointed doctor (SOAD) and it may not be given if you have made a valid Advance Directive, refusing ECT, or if you have made a Lasting Power of Attorney and the holder of the LPA does not give consent to the treatment. If it proves necessary to give medication to you in an emergency, this may only be given to you if it is immediately necessary to prevent harm to you or others. As soon as urgent treatment has proved necessary, arrangements will be made to arrange an assessment under the Mental Health Act.

If you would like further information about Consent to Treatment, Lasting Power of Attorney or Advance Directives, please ask a member of nursing staff.

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