

Management of Patients Detained Under the Mental Health Act 1983

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Equality Impact

Bolton NHS Foundation Trust strives to ensure equality of opportunity for all service users, local people and the workforce. As an employer and a provider of healthcare Bolton NHS FT aims to ensure that none are placed at a disadvantage as a result of its policies and procedures. This document has therefore been equality impact assessed to ensure fairness and consistency for all those covered by it regardless of their individuality. The results are shown in the Equality Impact Assessment (EIA).

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Version Control Schedule

Version	Type of Change	Date	Revisions from previous issues
Two	Changes to the main text.	January 2016	Revision of legislation Revised Service Level Agreement with Greater Manchester West Mental Health Trust

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1. INTRODUCTION

The Mental Health Act 1983 is an Act of the Parliament of the United Kingdom which applies to people in England and Wales. It covers the reception, care and treatment of mentally disordered persons, the management of their property and other related matters. In particular, it provides the legislation by which people diagnosed with a mental disorder can be detained in hospital or police custody and have their disorder assessed or treated against their wishes, unofficially known as "sectioning". Its use is reviewed and regulated by the Care Quality Commission.

The following information details the process to follow, when a patient admitted to, or already a patient in, the Trust, is detained under the Mental Health Act 1983 (MHA). It is a legal requirement to follow correct procedures when a patient is detained in the Trust under the provisions of the MHA as this will ensure the rights of the individual are recognised.

2. PURPOSE OF POLICY

This policy aims to ensure that all parties involved in the detention of a person under the terms of the MHA are aware of the correct process to be followed and the responsibilities of all involved.

Decisions under the Act must be taken with a view to minimising the undesirable effects of mental disorder, by maximising the safety and wellbeing (mental and physical) of patients, promoting their recovery and protecting other people from harm. (MHA Code of Practice)

The Trust has a Service Level Agreement with Greater Manchester West Mental Health Trust (GMW) who take responsibility for providing administration, advice and information regarding the management of the patient in relation to the law. – **See Scheme of Delegation(11)**

3. TERMINOLOGY AND DEFINITIONS

The Mental Health Act 1983 is an Act of the Parliament of the United Kingdom which applies to people in England and Wales. It covers the reception, care and treatment of mentally disordered persons, the management of their property and other related matters.

- **Mental disorder:** any disorder or disability of the mind (MHA Act 1983 as amended 2007)

Responsible Clinician- The Responsible Clinician is the Approved Clinician who will have overall responsibility for the patient's treatment for mental disorder. They must be trained and registered as an Approved Clinician under the terms of the MHA and would usually be a Consultant Psychiatrist.

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- **AMHP-** approved mental health professional generally responsible for a variety of functions regarding the use of the MHA
- **Nearest Relative-** person identified by the MHA Sec. 26 to have rights and powers in respect of the patient
- **Approved Clinician-** A mental health professional approved by the Secretary of State for Health to act as an Approved Clinician for the purposes of the MHA.
- **Detention-** refers to a patient who is held compulsorily in hospital under the MHA for a period of assessment or medical treatment.
- **Hospital managers-** In the context of the MHA refers to the individual or body responsible for a particular hospital.
- **Mental Capacity Act (MCA)-** The Mental Capacity Act 2005, which provides a legal framework for decision-making in relation to people who lack capacity to take particular decisions for themselves.
- **R.A.I.D. Team–** (Rapid Assessment Interface and Discharge)- Acute Mental Health Service provided by GMW for Bolton NHS Foundation Trust

4. ROLES AND RESPONSIBILITIES

4.1 Trust Board and Chief Executive

Have overall responsibility for the compliance with the requirements of the MHA with delegated responsibility to the Executive Director. Responsibilities include ensuring that the authority for detaining patients is valid, that all relevant admission documents are in order and the establishment of a panel to review detentions where applicable as per the Service Level Agreement with GMW.

4.2 Director of Nursing

The Director of Nursing is the designated Executive Director who ensures that there are policies and processes in place to comply with the statutory requirements of the MHA including the allocation of a Responsible Clinician (see definition below) to each patient detained.

4.3 Divisional Management Teams

In the first instance the Matron should be informed by the ward sister/charge nurse when a patient in their area is to be detained to ensure that all statutory processes and obligations are fulfilled.

4.4 Ward Managers

The nurse in charge of the ward / department must be aware of the need for a formal process to be followed when a patient, in their area, is to be detained

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under the MHA or on occasions when a patient already detained, is admitted to the area. The Nurse in Charge of the ward must consider the issues that are involved in detaining a patient under the MHA. In the event that a patient is detained under the MHA, the Nurse in Charge is also responsible for ensuring that the patient's Consultant and the Divisional Management Team via the Matron are informed. Also the ward manager must ensure all documentation is forwarded to the GMW MHA Administrator and the document checklist is completed. If it is noted that required documents are missing from the case notes, the GMW Administrator must be informed immediately and the issue incident reported via 'Safeguard'.

5. DETENTION UNDER THE MHA AND CONSENT TO TREATMENT

5.1 Any individual with capacity has the right to refuse treatment for whatever reason, whether religious, cultural or personal. Refusal to comply with such patient wishes may constitute assault. There are exceptions to this basic principle, particularly relating to patients with mental disorder.

5.2 Not all detention sections of the MHA allow compulsory treatment for mental disorder. Clear advice must be sought from the Registered Clinician involved in the patient's care or the MHA Office Bolton Mental Health Unit. The compulsory treatment of physical conditions using the MHA can only take place in very specific situations where the condition is linked to the mental disorder. If treatment for a physical condition needs to be given against the patient's wishes then the Mental Capacity Act and Deprivation of Liberty provisions should be applied.

5.3 The MHA places considerable onus on the Managers of the detaining Trust to provide information and assistance to patients in relation to their detention and rights. Good practice in this area is guided by the Code of Practice (Code of Practice 2015)).

5.4 Rights of appeal exist to an independent tribunal and also directly to the Mental Health Act Office.

5.5 The MHA states that dependence on alcohol or drugs is not considered to be a disorder or disability of the mind and that there are therefore no grounds under the Act for detaining a person in hospital on the basis of alcohol or drug dependence alone.

6 THE PROCESS OF DETENTION

The MHA contains legislation that allows the compulsory admission, detention and treatment of those suffering from mental disorder; it also includes mechanisms to safeguard the rights of patients.

The process of detention is laid down in law and must be complied with to ensure that actions are lawful. This will comply with good practice and avoid the risk of litigation for false imprisonment or assault that could arise from failure to correctly apply the law.

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6.1 Applicable MHA sections include:

- **5(2)** - Holding power for 72 hours by Doctor
- **2** Detention for 28 days for assessment and treatment of mental disorder (Responsible Clinician, second independent Medic and AMHP)
- **3** Detention for upto 6 months renewable (Responsible Clinician second independent Medic and AMHP)
- **136** - Removal by Police to designated Place of Safety (may include the Emergency Department) – refer to ‘Operation Procedure for Section 136 Suite’

6.2. The emergency decision to detain a patient using the MHA can only be made clinical staff with the authority to do so.

6.3 Each patient detained must have a Responsible Clinician allocated via RAID and documented in the medical record.

6.4 When this decision has been made by the appropriate person the nurse in charge of the ward must inform the

- GMW MHA Administrators (who will subsequently hold all documentation)
- the patient’s Consultant
- Divisional Management Team
- GMW Bleep holder out of hours (via switch)

6.5 The decision to hold or detain with the date and time of detention must be documented in both the nursing and medical notes.

6.6 The necessary documentation should be obtained from the RAID Team.

6.7 The documentation must be sent to the designated GMW MHA Administrator

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by Bolton NHS Foundation Trust**

Patient identified as having potential mental health diagnosis

**Refer to RAID Team (24hr service)(ext. 5743)
(Rapid Assessment, Interface & Discharge –
Provided by Greater Manchester West Mental Health Trust)**

RAID to assess, advise and support and consider for section of Mental Health Act if appropriate.

**Requires imposition of section of Mental Health Act (Detention by the State)
- RAID to coordinate and arrange assessment by**

- 1. Consultant and a second opinion**
- 2. Approved Mental Health Professional (AMHP)**
- 3. Provide appropriate documentation**

**COPY OF ALL DOCUMENTATION MUST BE IN CASE NOTES
Original Documentation will be held by GMW**

Is patient medically fit for transfer to Mental Health Unit?

YES

- 1. RAID to liaise with GMW Bed Managers.**
- 2. Ward to complete Section 19, H4 Transfer of Care Form(copy in notes and original sent to GMW Administration Office, Rivington Unit.**
- 3. RAID to arrange transfer.**

Patient can lodge appeal with Bolton FT if believes detention to be unjust.

***If patient dies whilst subject to Mental Health Act, Coroner to be informed immediately.**

NO

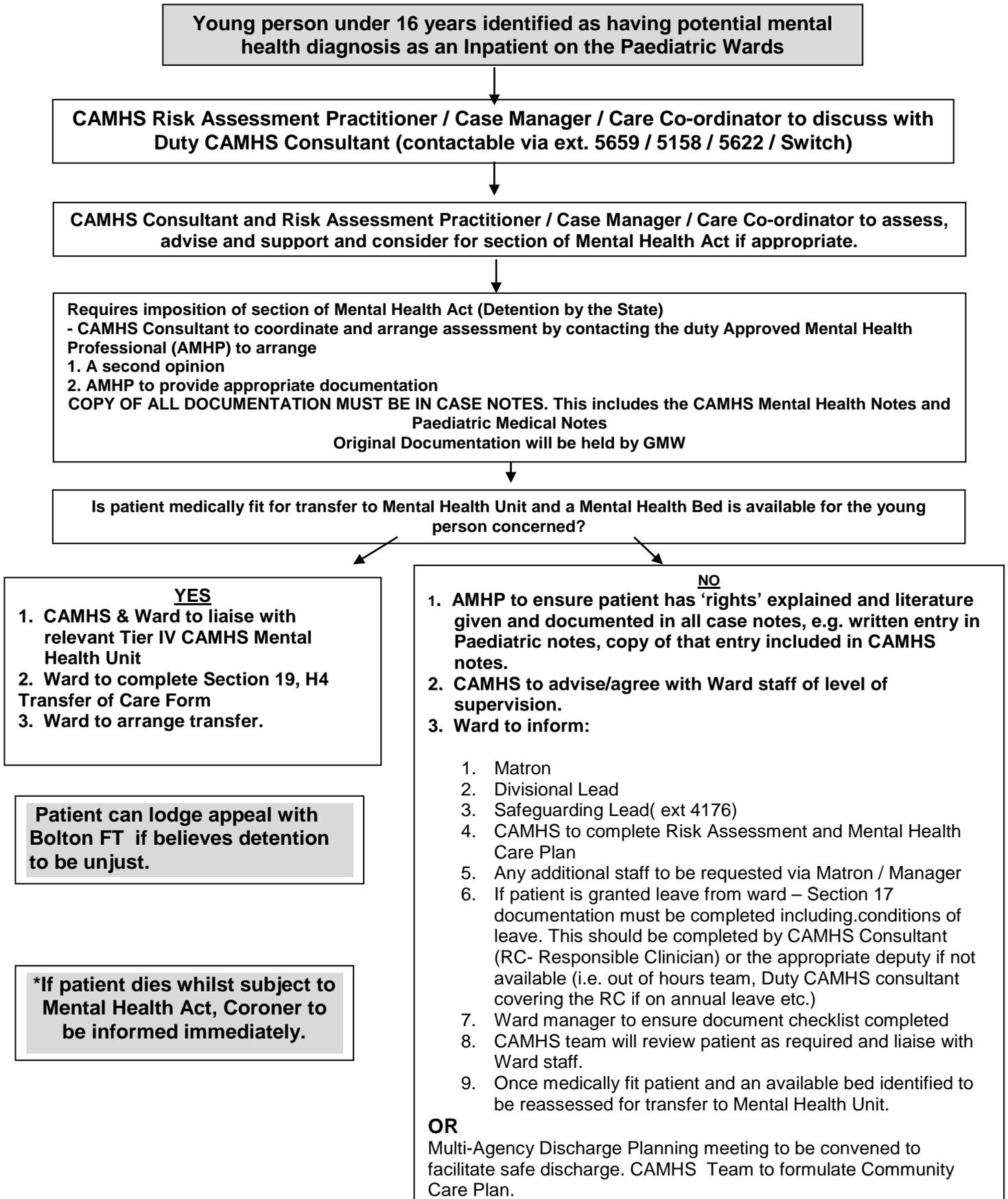
- 1. AMHP to ensure patient has 'rights' explained and literature given and documented in case notes**
- 2. RAID to advise/agree with Ward staff of level of supervision.**
- 3. Ward to inform:**
 1. Matron
 2. Divisional Lead
 3. Safeguarding Lead(ext 4176)
 4. Ward to complete Risk Assessment and Mental Health Care Plan
 5. Bolton FT to provide required staff, eg 1:1 supervision if required
 6. Ward manager to ensure document checklist completed
 7. Ward to complete 1:1 request form.
 8. If patient is granted leave from ward – Section 17 documentation must be completed inc. conditions of leave
 9. RAID team will review patient as required and liaise with Ward staff.
 10. Once medically fit patient to be reassessed for transfer to Mental Health Unit.

OR

Discharge Planning meeting to be convened to facilitate safe discharge. RAID Team to formulate Community Care Plan.

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Patient can lodge appeal with Bolton FT if believes detention to be unjust.

***If patient dies whilst subject to Mental Health Act, Coroner to be informed immediately.**

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7 PATIENT AND RELATIVE INFORMATION

The MHA requires that managers ensure that patients who are detained under the Act understand important information about how it applies to them. Information must be given to the patient both orally and in writing and must be given in a way that the patient understands.

The MHA also requires that the patient's nearest relative is given a written copy of any information given to the patient unless the patient requests otherwise. The nearest relative should also be told when the detention period is completed.

8 NOTIFICATIONS

1.The Doctor who certifies the death must notify the Coroner immediately

2.The Trust must inform the Care Quality Commission (CQC) of the death or unauthorised absence of patients detained or liable to be detained under the MHA. In this instance the unauthorised absence of a detained person becomes notifiable to the CQC when the person is still absent after midnight on the day their absence began.

9. TRANSFER OF CARE TO ALTERNATIVE CARE PROVIDER / ALTERNATIVE SITE

Certain patients, when medically fit but who require continued detention under the Mental Health Act may require transfer to a a Mental Health Unit.

It is the responsibility of Bolton FT to arrange transport and the appropriate escort to the the new care provider even if a section of the mental health act has been imposed. The patient becomes the responsibility of the receiving care provider once they have arrived .

GMW will support with advice if there any concerns in respect of the transfer.

10. PROVISION OF EXTRA STAFF TO SUPERVISE PATIENTS DETAINED

- It is the responsibility of Bolton NHS Foundation Trust to provide the appropriate nursing staff required to provide agreed,additional supervision for any patient detained under the Mental Health Act.
- A Care plan / level of supervision should be agreed in consultation with the RAID Team who will review the patient as agreed with the Ward Team.
- The Ward Manager must inform the Matron of any additional staff requirements and consider requesting Bank/Agency Mental Health Nurses as required.GMW can provide information on Specialist Staffing Agencies as required.

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11 ACCESS TO AND PROVISION OF INDEPENDENT MENTAL HEALTH ADVOCATES (IMHA)

Patients detained under the Mental Health Act have the right to have access to and be supported by an IMHA. The Advocate will support a patient to exercise their rights and ensure they can participate in the decisions that are made about their care and treatment.

The appointment of an IMHA must be discussed with the AMPH and if required an immediate referral must be made to 'Rethink Advocey Service' either by the AMPH or Ward Manager as agreed(referral form on intranet).The Safeguarding Lead for Adults must be informed of all referral requests.

12. SCHEME OF DELEGATION

Under Service Level Agreement with GMW December 2015

(Author –Greater Manchester Mental Health Trust)

Revised and updated to incorporate changes to the Mental Health Act 1983 Code of Practice from 1 April 2015.

Background

The Mental Health Act 1983 as amended by the Mental Health Act 2007 allocates responsibility for a number of functions to “the hospital managers”. For NHS foundation trusts the trusts themselves are defined as the hospital managers. The Act allows for most of these functions to be undertaken on behalf of the hospital managers by the staff of external organisations.

In respect of the hospital managers’ power under section 23 to discharge unrestricted detained patients the Act allows the hospital managers to arrange for this power to be exercised on their behalf by a “managers’ panel” consisting of three or more people appointed for the purpose. Chapter 37 of the Mental Health Act 1983 Code of Practice states that the arrangements for who is authorised to take such decisions should be set out in a scheme of delegation which should be approved by a resolution of the Trust Board.

- **Implementation**

The authorised persons will undertake the functions in accordance with the relevant guidance as set out in the following:

- Mental Health Act 1983 Code of Practice 2015
- Reference Guide to the Mental Health Act 1983
- Mental Health Tribunal Changes November 2008
- GMW Mental Health Act policies

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Monitoring and Review

The performance of the of all hospital managers' functions will be delegated to Greater Manchester West Mental Health NHS Foundation Trust (GMW) and will be subject to monitoring and review by the Mental Health Act and Mental Capacity Act Monitoring Meeting which will have Bolton FT representation and will report to Bolton FT Quality Governance arrangements.

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Scheme of Delegation

Person(s) shown in bold = person(s) with responsibility to ensure function is carried out
 Person(s) shown in normal font = other person(s) authorised to carry out the function

Function	References: Code of Practice / Reference Guide	Person(s) authorised to perform function
Receipt of admission documents	Code of Practice: Chapter 17 and 35 (35.7-35.10) Reference Guide: 2.86-2.110	Nurse in charge of admission ward GMW MHA Administrator
Scrutiny of admission documents	Code of Practice: Chapter 35: 35.6 -35.10 Reference Guide: 2.86-2.110	GMW MHA Administrator
Rectification of correctible errors in admission documents	Code of Practice: Chapter 25: 35.11-.5.13 Reference Guide: 2.96-1.100	GMW MHA Administrator
Scrutiny of medical recommendations	Code of Practice: Chapter 25: 35.12	Consultant Psychiatrist by arrangement with GMW MHA Administrator
Audit of receipt and scrutiny of documents	Code of Practice: Chapter 35: 35.18-35.20	GMW Clinical Audit Manager GMW to hold separate records for Bolton FT admissions and transfers
Requests to local social services authorities for social circumstances reports re. applications for admission by nearest relatives	Code of Practice: Chapter 37: 37.12 Reference Guide: 12.34-12.35	GMW MHA Administrators
Function	References: Code of Practice/ Reference Guide	Person(s) authorised to perform function
Authorisation of transfer of unrestricted detained patients	Code of Practice: Chapter 37: 37.16- 37.29 Reference Guide: Chapter 13	Responsible clinician
Authorisation of transfer of unrestricted detained patients into guardianship	Code of Practice: Chapter 37: 37.28 and 37.29 Reference Guide: 13.35-13.39 and 19.137-19.139	Responsible clinician

Provision of information to detained patients	Code of Practice: Chapter 4 : 4.9-4.30 Code of Practice: Chapter 37: 37.32 Reference Guide: Chapter 12	GMW Duty Nurse (Bleep holder) RAID TEAM Approved mental health professionals Qualified social workers Qualified nurses
Assisting detained patients to request a hospital managers' hearing or a Mental Health Tribunal hearing	Code of Practice Chapter 12: 12.6-12.9:	GMW Duty Nurse (Bleep holder) RAID Team Responsible clinicians Approved clinicians Approved mental health professionals Qualified social workers Ward Manager/Qualified nurses
Provision of information to nearest relatives	Code of Practice: Chapter 4; 4.31-36 Code of Practice: Chapter 37: 37.32-.33	Approved Mental Health Professional RAID Team (hard copies of leaflets to be held by site manager and RAID Team) Responsible clinicians Approved clinicians Qualified social workers Qualified nurses
Exercise of hospital managers' power of discharge in relation to unrestricted detained patients and community treatment order patients	Code of Practice: Chapter 38	Delegated GMW MHA Hospital Managers
• Function	References: Code of Practice/ Reference Guide	Person(s) authorised to perform function
Provision of information to victims of unrestricted part 3 patients	Code of Practice: Chapter 37: 37.34 Code of Practice: Chapter 40: 40.16 - 40.19	GMW Duty Nurse (Bleep holder) RAID TEAM Approved mental health professionals Qualified social workers Qualified nurses •
Referral of patients to Mental Health Tribunal	Code of Practice: Chapter 37: 37.39- 37.43 Reference Guide: 23.1-23.15	GMW MHA Administrator
Development of policies required by the Code of Practice	Code of Practice: various	Mental Health Act and Mental Capacity Act Monitoring Meeting Bolton FT representation
Approval of policies required by the Code of Practice	Code of Practice: various	Bolton FT Quality Governance Committee
Maintenance of list of approved clinicians	Code of Practice: Chapter 36: 36.3-36.11	GMW Medical Director Held by GMW MHA

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		Administrator
Ensuring that under 18 year olds are admitted to suitable environments, and that in determining the suitability of those environments a person with CAMHS experience is consulted	Code of Practice: Chapter 19 Chapter: 37: 37.47	Consultant/ Responsible Clinician admitting the patient. Doctor acting on behalf of the Consultant/ responsible Clinician admitting the patient RAID Team

13 POLICY IMPLEMENTATION

12.1. The Director of Nursing and Deputy Director of Nursing have overall responsibility for the implementation of this policy.

12.2. Divisional Nursing Directors ,Matrons and Ward Managers are responsible within their area for ensuring that this policy is implemented and that staff familiarise themselves with the policy.

12.3. For Advice and support please contact Lead Nurse for Safeguarding Adults

12.4. The Trust Safeguarding Committee is responsible for reviewing and monitoring progress in implementing this policy.

12.5. The policy will be communicated via Team Brief and Intranet

14. TRAINING IN RESPECT OF THE MENTAL HEALTH ACT

Bolton FT will provide a programme of Level 1 training in respect of the Mental Health Act with designated cohorts having access to the GMW Training programme. All relevant staff will make themselves familiar with the policy.

15. MONITORING AND REVIEW

13.1. This policy will be reviewed in three years or earlier in line with publication of any new guidance and or findings locally, regionally or nationally. The table below summarises the monitoring and reporting arrangements for this policy.

16. AUDIT

Every quarter there will be an audit undertaken by the Trust of all documentation completed in respect of the detention of patients under the Mental Health Act and reported to the Quality Assurance Committee

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17. REFERENCES

- Mental Health Act 1983 Code of Practice 2015
- Reference Guide to the Mental Health Act 1983
- Mental Health Tribunal Changes November 2008
- Operation Procedure for Section 136 Suite

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EQUALITY IMPACT ASSESSMENT TOOL

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval

		Yes/No	Comments
1.	Does the document/guidance affect one group less or more favourably than another on the basis of:	NO	
	Race	NO	
	Ethnic origins (including gypsies and travellers)	NO	
	Nationality	NO	
	Gender (including gender reassignment)	NO	
	Culture	NO	
	Religion or belief	NO	
	Sexual orientation	NO	
	Age	NO	
	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	NO	
2.	Is there any evidence that some groups are affected differently?	NO	
3.	If you have identified potential discrimination, are there any valid exceptions, legal and/or justifiable?	NO	
4.	Is the impact of the document/guidance likely to be negative?	NO	
5.	If so, can the impact be avoided?	YES	
6.	What alternative is there to achieving the document/guidance without the impact?	NIL	
7.	Can we reduce the impact by taking different action?	NO	

If you have identified a potential discriminatory impact of this procedural document, please refer it to the Equality and Diversity Co-ordinator together with any suggestions as to the action required to avoid/reduce this impact.

Document Development Checklist

Type of document	Policy
Lead author:	Sandra Crompton
Is this new or does it replace an existing document?	Replaces – previous policy
What is the rationale/ Primary purpose for the document (Motivation for developing the document)?	Adherence to 'Care Act 2014' Legislation
What evidence/standard is the document based on?	Mental Health Act 1983
Is this document being used anywhere else, locally or nationally?	NO
Who will use the document?	Bolton NHS Foundation Trust
Is a pilot run of the document required? (optional)	NO
Has an evaluation taken place? What are the results? (optional)	NO
What is the implementation and dissemination plan? (How will this be shared?)	Safeguarding Adults Page
How will the document be reviewed? (When, how and who will be responsible?)	Safeguarding Committee January 2018 Mental Health(GMW) Liaison
Are there any service implications? (How will any change to services be met? Resource implications?)	Service Level Agreement with Greater Manchester West Mental Health Trust
Keywords (Include keywords for the document controller to include to assist searching for the policy on the Intranet)	Detention of Patients Under the Mental Health Act
Staff/stakeholders consulted	YES
EIA	YES
Signed and dated By validator – Jackie Bene, Chief Executive By ratifying officer – Trish Armstrong Child, Director of Nursing Date 1.4.16 (amended)	

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