

DOCUMENT CONTROL	
Title:	Section 132, 132A & 133 – Provision of Information to Detained Patients & Nearest Relatives
Version:	6
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Scope:	
This policy applies to all staff directly employed by Pennine Care NHS Foundation Trust, whose work directly or indirectly involves patients subject to the MHA both in hospital and the community.	
Purpose:	
The purpose of this document is to:	
<ul style="list-style-type: none"> • Standardise practices and processes of providing information • Clarify and provide guidance to staff responsible for delivering the information • Provide a framework to staff on the information that should be given to detained patients and their nearest relative • Identify who should deliver this information and the expected frequency of the delivery of information 	
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Individual(s) & group(s) involved in the Development:	
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Other Trust documentation to which this policy relates (and when appropriate should be read in conjunction with):	
MHL005	Nearest Relative Policy
CL003	The Care Programme Approach Policy

CO004	Confidentiality Policy / Access to Health Records
CO003	Complaints Policy
CL087	Victims Policy
CL032	Management of CTO and SCT Policy
CL021	Section 136 Mental Health Act – Removal to a Place of Safety
CL058	Treatment of Patients subject to the MHA – Part 4 and Part 4A
CL060	Admission, Entry and Exit Policy for Mental Health Wards
MHL002	Leave of Absence Policy – Section 17
CL081	Electro Convulsive Therapy Policy
CL049	Mental Health Act S117 After Care Policy
CO010	Incident Reporting, Management and Investigation Policy
	Briefing Sheet on the Mental Capacity Act
	The MHA Code of Practice (particularly chapter 4)
Policy Associated Documents:	
TAD_MHL003_01	Section 132 patient rights monitoring form for detained inpatients (to be printed on pink paper – where possible)
TAD_MHL003_02	Section 132A patient rights monitoring form for community treatment order patients (to be printed on pink paper – where possible)
Other external documentation/resources to which this policy relates:	
CQC Regulations	
This Policy supports the following CQC regulations:	

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i. GUIDING PRINCIPLES

It is essential that all those undertaking the functions under the Mental Health Act 1983 (MHA) understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the Act.

The five overarching principles are:

Least restrictive option and maximising independence

Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.

Empowerment and involvement

Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.

Respect and dignity

Patients, their families and carers should be treated with respect and dignity and listened to by professionals.

Purpose and effectiveness

Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

Efficiency and equity

Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

Staff must apply all the principles to all decisions. All decisions must be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998 (HRA) and Equality Act 2010. All five sets of principles are of equal importance, and should inform any decision made under the Act. The weight given to each principle in reaching a particular decision will need to be balanced in different ways according to the circumstances and nature of each particular decision.

Any decision to depart from the directions of the policy and the Code of Practice must be justified and documented accordingly in the patient's case notes. Staff should be aware that there is a statutory duty for these reasons to be cogent and appropriate in individual circumstances.

1. INTRODUCTION

The Trust is committed to ensuring all detained patients receive information relating to their detention, as required by the Mental Health Act 1983. The Trust acknowledges that the provision of rights is not just a statutory duty but is important to patients, staff and family/carers in ensuring that not only is the information being provided but patients are being assisted in exercising their rights while they are detained.

The Trust is also committed to improving the patient's experience and recognises that effective communication is essential in ensuring appropriate care and respect for patients' rights are delivered with a consistent approach when information is being provided to detained patients and their nearest relative (where appropriate).

2. PURPOSE

The purpose of this document is to:

- Standardise practices and processes of providing information
- Clarify and provide guidance to staff responsible for delivering the information
- Provide a framework to staff on the information that should be given to detained patients and their nearest relative
- Identify who should deliver this information and the expected frequency of the delivery of information

3. DEFINITIONS

Mental Health Act 1983 (MHA)

The Mental Health Act is the legislation governing all aspects of compulsory admission to hospital, as well as the treatment, welfare, and after-care of detained patients. It also allows for the supervision of people in the community. It provides for mentally disordered persons who need to be detained in hospital in the interests of their health, their own safety or the safety of other persons. Compulsory admission to hospital is often referred to as "sectioning". Altogether there are over 149 separate sections, not all of them allow for detention. The MHA sets out when and how a person can be sectioned and ensures that the rights of those detained are protected.

Hospital Managers (HM)

Hospital Managers have a central role in operating the provisions of the MHA. In NHS Foundation Trusts, the Trust itself is defined as the 'Managers'. It is the Hospital Managers who have the power to detain patients who have been admitted under the Act and who have the key responsibility for ensuring that the requirements of the Act are followed. In particular they must ensure that patients are detained only as the Act allows and that their treatment and care accord fully with its provisions; and that the patients are fully informed of and are supported in exercising their statutory rights.

In practice, for example, either qualified nursing staff or Mental Health Law Administrators carry out duties on behalf of the Hospital Managers.

Responsible Clinician (RC)

The Responsible Clinician is the approved clinician with overall responsibility for a patient's case. Certain decisions (such as renewing a patient's detention or placing a patient on a Community Treatment Order (CTO)) can only be taken by the responsible clinician.

Nearest Relative (NR)

The Nearest Relative (NR) is a patient's family member, as identified through a hierarchical list contained within section 26 of the Act.

The NR is the person who is informed (unless the patient objects) or consulted with about the patient becoming subject to the provisions of the Act, which includes the right to order discharge of the patient and to object to some provisions of the Act.

The patient, any relative, a person who the patient usually resides with or an approved mental health professional may apply to a County Court for displacement of the NR.

The term Nearest Relative should not be confused by the term 'next-of-kin'.

Community Patients

These are patients living in the community, but who continue to be subject to Section 17A of the Mental Health Act as a CTO patient. The purpose of CTO is to allow suitable patients to be safely treated in the community rather than under detention in hospital.

Independent Mental Health Advocates (IMHAs)

IMHAs are a statutory right and safeguard for people detained under the legislation. The objective of an IMHA is to provide support and represent the personal views of the patient. IMHAs may be involved in providing patients with information on their rights, medication and any restrictions or conditions to which they are subject. It is important to take whatever steps are practicable to ensure that patients understand that help is available to them from IMHA services and how they can obtain that help both verbally and in writing. . It is also important that mental health professionals are aware and keep themselves up to date with this statutory right and safeguard through training, promoting awareness and communication so that they are in a better position to relay this statutory information to the patient on a regular basis. IMHA input will be sought in the development and delivery of this training.

Mental Health Tribunal

The Mental Health Tribunal is an independent judicial body. Its main purpose is to review the cases of detained, conditionally discharged, and CTO patients under the Act and to direct the discharge of any patients where it thinks it appropriate. It also considers applications for discharge from guardianship. The Tribunal provides a significant safeguard for patients who have had their liberty curtailed under the Act.

4. ROLES & RESPONSIBILITIES

The Mental Health Law Scrutiny Group is responsible for ensuring the requirements of this policy are adhered to.

The Mental Health Law and Acute Care Forum are responsible for escalating issues to the Mental Health Law Scrutiny Group for investigation and monitoring the use of this policy in the local boroughs.

Lead Managers, Team Supervisors, Health and Social Care Staff are responsible for the implementation of the policy and in particular, for ensuring that patients are provided with their rights in accordance with the required processes as laid out within this policy.

It is the responsibility of all staff whose work involves patients subject to the MHA to ensure they are familiar with their individual responsibilities within this policy. Staff have a responsibility to report any issues relating to the implementation of this policy to the Mental Health Office, via their line management and the incident reporting process, as appropriate.

The Mental Health Law Manager will ensure that the provision of patient rights is covered within the Trust training program on Mental Health Law and that any learning requirements identified through the monitoring of this policy are included in future training programs.

The senior on-site member of the nursing staff or the nurse in charge on duty at the time the patient is placed on a section, or received on to the unit under a section, is responsible for ensuring the statutory information is given both orally and in writing. The information should be given to patients as soon as practicable after the commencement of the patient's detention and as soon as practicable after a different section of the Act is used to authorise detention. In practice, this will mean that the patient will have to be told immediately if he or she is detained for 72 hours or less and include those patients who are subject to recall to hospital under CTO. If the patient has not been recalled to a particular ward then the bleep holder of the hospital the patient has been recalled to will be responsible for ensuring the policy is adhered to.

Nursing staff are responsible for ensuring that the Patients' Rights Monitoring Form (TAD_MHL003_01) is fully completed and that no parts of the form requesting information is left blank. Information should be given both orally and in writing in ways that the patient can understand. In addition, an entry must also be made in the ward diary to indicate when the patient is due to have their rights revisited. Further details are available under heading 18 - Process of Providing Information.

Mental Health Law Offices have a responsibility to:

- Collect, scrutinise and monitor the completion of the patient rights forms. Section 132 forms must be scrutinised to ensure that patient rights forms have been fully and correctly completed including checking details of the NR and the addresses are cross referenced with the section papers and the current electronic patient information system
- Ensure that the initial s132 patient rights monitoring form is in place and completed by the nursing staff within 7 days of the patient being subject to detention under the MHA.

Any difficulties in obtaining the initial s132 patient rights monitoring form within this period will need to be escalated with the ward staff and ward manager and copied to the senior manager (i.e. inpatient manager) in the first instance.

- Ensure that weekly reminders are sent to ward managers/charge nurses with a copy of the ward view which shows which patient monitoring forms are due immediately following detention and which are due for revisiting this should be followed up by emails and telephone reminders where necessary to ensure patients have been given statutory information about their rights in a timely manner. All incomplete or poorly completed forms will be returned back to the wards and flagged with the nursing team immediately.
- Ensure that if a patient or their NR has missed an opportunity to apply to a tribunal because of a failure to provide the information set out in this provision, the patient (or his / her representative) are made aware that they should request the Secretary of State to refer the case to the tribunal under s67 or s71 of the MHA. The MHL Office will also record this as a Grade 4 incident resulting in an Investigation Report. If the patient has been detained for 7 days or more and subsequently discharged from detention without a section 132 form being completed then this will also result in a Grade 4 incident being recorded.

The application of this policy for community based patient's lies with their appointed Care Coordinator or Community Psychiatric Nurse (or equivalent) and the Responsible Clinician (or nominated deputy) who must also comply with the guidance contained within this policy together with the guidance note on the s132A patient rights monitoring form.

On behalf of the Hospital Managers qualified health/social care staff (both within in-patient facilities and within the community who are responsible for the care and treatment of patients subject to the MHA) are responsible for ensuring that:

- Patients who are detained or subject to a CTO understand important information about how the Act applies to them, including their legal situation and their rights;
- Information is given in accordance with the requirements of the legislation, at a suitable time and in an accessible format, where appropriate with the aid of assistive technologies and interpretative and advocacy services;
- The correct information is given to patients and their nearest relatives;
- Information is provided in a format and/or language that the individual understands (e.g. Braille, easy read or Moon).
- People who give the information have received adequate and appropriate training and guidance and, if relevant, have specialist skills in relation to people with learning disability, autism and/or children and young people (seek appropriate support from specialist staff, i.e. inreach/outreach team where necessary);
- A record is kept of the information given, including how, when, where and by whom it was given, and an assessment made of how well the information was understood by the recipient;

- Regular checks are made that information has been properly given to each patient and understood by them;
- Patients are offered assistance to request a Hospital Managers' Hearing or make an application to the Tribunal, and that the applications are transmitted to the Tribunal without delay.
- Patients are informed of how to contact a suitably qualified legal representative (and given assistance if required); that free legal aid may be available; and how to contact any other organisation which may be able to help them make an application to the Tribunal.

5. SECTION 132, 132A AND 133 INFORMATION

Particular and relevant information should be given to each patient as part of the admissions process about the nature and implications of admission on a section in order to ensure that the patient understands their legal rights. Information must be given orally and in writing, in an appropriate format e.g. Braille and in a language that the patient understands.

Section 132 (detained inpatients) and 132A (Community Treatment Order patients) requires the Trust to take steps as are practicable to ensure a detained patient understands:

- Under which provision of the MHA the patient is detained and the effect of that provision;
- What rights of applying to the Mental Health Tribunal and the Hospital Managers are available to them in respect of their detention under that provision.

Section 132 and 132A state that the above steps shall be taken as soon as practicable after the commencement of the patient's detention under the provision in question.

Detained patients have a legal right under the MHA to be informed of their detention status and rights both orally and in writing, including in accessible formats as appropriate (e.g. Braille, Moon, easy read) and in a language the patient understands. It is good practice for patients to be kept fully informed and involved in their care plan and this includes all statutory matters that have a bearing on their care, recovery and rehabilitation within the Trust and upon discharge from detention. It would not be sufficient to repeat what is already written on an information leaflet as a way of providing information orally.

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 made aware of this right with information being provided in a format and language the patient understands.

Unless the patient objects the Hospital Managers must also ensure the NR (if known) is provided with a copy of any information given to the patient at the same time or within a reasonable time afterwards. If the patient does not have the capacity to agree to information being sent, nursing staff can specify on the patient rights monitoring form that we can do so in their best interests.

The MHL Office will be responsible for ensuring a letter is sent to the nearest relative within **5 days** of receiving the completed s132 patient rights monitoring form. The letter will be copied to the patient and the ward staff or community staff to be retained in the patient notes. It should be noted however that without this information being documented on the monitoring form by ward or community staff the MHL Offices will be unable to inform the NR of their rights and the information relating to the patients detention within a timely manner. MHL Offices must date stamp when forms are received for audit purposes.

Section 133 provides a duty for the Hospital Managers to inform the NR of discharge (including discharge under s.17A) and this is to be given at least seven days before the discharge if practicable. To facilitate this it will be necessary for the patients' RC to inform the MHL Office of the planned discharge where possible.

The requirement to inform the NR does not apply **if** the patient requests that information is not sent. The NR may also request that information is not sent to them regarding their relative.

6. COMMUNICATION WITH PATIENTS

Effective communication is essential in ensuring appropriate care and respect for patients' rights. It is important that the language used is clear and unambiguous and that people giving information check that the information that has been communicated has been understood.

Wherever possible, patients should be engaged in the process of reaching decisions which affect their care and treatment under the Act. Consultation with patients involves helping them to understand the information relevant to decisions, their own role and the roles of others who are involved in taking the decision. Ideally decisions should be agreed with the patient. Where a decision is made that is contrary to the patient's wishes, that decision and the authority for it should be explained to the patient using a form of communication that the patient understands.

All reasonable steps should be undertaken to overcome barriers to effective communication, which may be caused by any of a number of reasons, including:

- If the patient's first language is not English
- If there are technical terms or jargon
- If the patient had difficulty in maintaining their attention for extended periods
- If the patient has a hearing or visual impairment or have difficulty in reading or writing
- If the patient's cultural background is significantly different from that of the person speaking to them
- Their age. Children and young people for example will require information to be explained in a way that they can understand and in a format appropriate for their age.

Those with responsibility for the care of patients need to identify how communication difficulties affect each patient individually, so that they can assess the needs of each patient and address them in the most appropriate way. Hospitals and other organisations

should make people with specialist expertise (e.g. in sign language or Makaton) available as required.

Independent Mental Health Advocates (IMHAs) engaged by patients can be invaluable in helping patients to understand the questions and information being presented to them and in helping them to communicate their views to staff.

Where an interpreter is needed, every effort should be made to identify who is appropriate to the patient, given the patient's gender, religion, language, dialect, cultural background and age. The patient's relatives and friends should only exceptionally be used as intermediaries or interpreters. Interpreters (both professional and non-professional) must respect the confidentiality of any personal information they learn about the patient through their involvement.

7. INFORMATION ABOUT DETENTION AND CTOs

Patients should be given all relevant information, including on complaints, advocacy, legal advice, safeguarding and the role of the Care Quality Commission (CQC); and it is important that they understand how the Act applies to them. This information must be given to them as soon as practicable after the start of their detention or CTO, or after a CTO patient has been recalled to hospital. Additionally, this information should be readily available to them throughout their detention or the period of the CTO.

It is important that information is also given to patients as soon as practicable when their status is changed from detained to informal and from informal to detained (i.e. informal to section 5(4) or 5(2) to section 2 or 3 for instance). This should happen whether the change in status is planned or not, for example, if detention papers are found to be invalid or a section inadvertently lapses.

Information should be given to each patient in a language and manner that best enables the patient to understand it. Staff should provide every assistance to patients to exercise their statutory rights.

The patient **must** be informed of:

- Which provision of the Act the patient is detained under or on CTO and the effect of those provisions
- The rights (if any) of their Nearest Relative to discharge them (and what can happen if their responsible clinician does not agree with that decision)
- The effect of the CTO (if applicable), including the conditions which they are required to keep to and the circumstances in which their responsible clinician may recall them to hospital
- The role of the IMHA and how to obtain their help should they require it

As part of this, the patient should also be informed of:

- The reasons for their detention or CTO. This should include the essential legal and factual grounds for their detention or CTO. For the patient to be able to effectively

challenge the grounds for their detention or CTO, should they wish, they should be given the full facts rather than simply the broad reasons. This should be done promptly and clearly; and the patient should be told they may seek legal advice and assisted to do so if required.

- The maximum length of the current period of detention or CTO
- That their detention or CTO may be ended at any time if it is no longer required or the criteria for it are no longer met
- That they will not automatically be discharged when the current period of detention or CTO ends
- That their detention or CTO will not automatically be renewed or extended when the current period of detention or CTO ends
- The reasons for being recalled
- For patients subject to a CTO, the reasons for the revocation of a CTO.

Where the section of the Act under which the patient is being detained changes, they must be provided with the above information to reflect the new situation. This also applies where a detained patient becomes a CTO patient, where a CTO patient's community treatment order is revoked, or where a conditionally discharged patient is recalled to hospital.

Those with responsibility for patient care should ensure that patients are reminded from time to time of their rights and the effects of the Act. It may be necessary to give the same information on a number of different occasions or in different formats and to check regularly that the patient has fully understood it. Information given to a patient who is unwell may need to be repeated when their condition has improved. It is helpful to ensure that patients are aware that an IMHA can help them to understand the information.

8. INFORMATION ABOUT RECALL TO HOSPITAL WHILST ON CTO & CONDITIONALLY DISCHARGED PATIENTS

Where a patient is to be recalled to hospital, the RC should give (or arrange for the patient to be given) oral reasons for the decision before the recall. The patient may nominate another person who they wish to be notified of the decision.

Where a conditionally discharged patient is to be recalled to hospital, a brief verbal explanation of the Secretary of State's reasons for recall must be provided to the patient at the time of recall unless there are exceptional reasons why this is not possible e.g. the patient is violent or too distressed. The Secretary of State's warrant will detail the reasons. The patient should also receive a full explanation of the reasons for his or her recall within 72 hours after admission, and both written and oral explanations should be provided.

9. INFORMATION ABOUT CONSENT TO TREATMENT

Patients must be told what the Act says about treatment for their mental disorder. In particular they must be told:

- The circumstances (if any) in which they can be treated without their consent – and the circumstances in which they have the right to refuse treatment
- The role of the second opinion appointed doctors (SOADs) and the circumstances in which they may be involved
- The rules on electro-convulsive therapy (ECT) and medication administered as part of ECT.

10. INFORMATION ABOUT SEEKING A REVIEW OF DETENTION OR CTO

Patients must be informed of their rights to be considered for discharge, particularly:

- Of the right of the responsible clinician and the hospital managers to discharge them (and, for restricted patients, that this is subject to the agreement of the Secretary of State for Justice)
- Of their right to ask the hospital managers to discharge them
- That the hospital managers must consider discharging them when their detention is renewed or their CTO is extended
- Of their rights to apply to the Tribunal
- Of the rights (if any) of their nearest relative to apply the Tribunal on their behalf
- About the role of the Tribunal
- How to apply to the Tribunal

Hospital managers should ensure that patients are offered assistance to request a Hospital Managers' Hearing or make an application to the Tribunal, and that the applications are submitted without delay. They should also be told:

- How to contact a suitably qualified legal representative (and should be given assistance to do so if required)
- That free legal aid may be available
- How to contact any other organisation which may be able to help them make an application to the Tribunal e.g. Independent Mental Health Advocacy, Mental Health Law Administrators .etc.

It is particularly important that patients on CTO who may not have daily contact with people who could help them make an application to the Tribunal are informed and supported in this process.

CTO patients whose orders are revoked, and conditionally discharged patients recalled to hospital, should be told that their cases will be referred automatically to the Tribunal.

11. KEEPING PATIENTS INFORMED OF THEIR RIGHTS

Those with responsibility for patient care should ensure that patients are reminded from time to time of their rights and the effects of the Act. It may be necessary to convey the same information on a number of different occasions or in different formats and to check regularly that the patient has fully understood it. Information given to a patient who is unwell may need to be repeated when their condition has improved.

A fresh explanation of the patient's right should be considered in particular where:

- The patient is considering applying to the Tribunal, or when the patient becomes eligible again to apply to the tribunal
- The patient requests the hospital managers to consider discharging them, or such a request is refused
- The rules in the Act about their treatment change (for example, because three months have passed since they were first given medication, or because they have regained capacity to consent to treatment)
- Any significant change in their treatment is being considered
- There is to be a care programme approach review (or its equivalent)
- Renewal of their detention, or extension of their CTO is being considered
- A decision is taken to renew their detention or to extend their CTO
- A decision is taken to recall a community patient or revoke a CTO
- A decision is taken to recall a conditional discharged patient to hospital

When a patient is discharged from detention or CTO, or the authority for their detention or the CTO expires, this fact should be made clear to them. The patient should also be given an explanation of what will happen next, including any section 117 after-care or other services which are to be provided.

12. INFORMATION ABOUT THE CARE QUALITY COMMISSION (CQC)

Patients must be informed about the role of the CQC and of their right to meet visitors appointed by the CQC in private. Patients should be told when the CQC is to visit the Trust and be reminded of the CQC's role as required.

Patients may also make a complaint direct to the CQC (see section 24 How to make a complaint).

13. INFORMATION FOR NEAREST RELATIVES

When a patient detained under the Act or on CTO is given information, they should be told that the written information will also be supplied to their nearest relative, so that they have a chance to discuss any concerns and object to the sharing of some or all of this information. Information provided to the nearest relative should be given at the same time as it is given to the patient, or within a reasonable time afterwards.

The Nearest Relative should also be told of the patient's discharge from detention or CTO (where practicable), unless either the patient or the Nearest Relative has requested that information about discharge should not be given. This includes discharge from detention onto CTO. If practicable, the information should be given at least seven days in advance of the discharge.

In addition, regulations require nearest relatives to be informed of various other events, including the renewal of a patient's detention, extension of CTO and transfer from one hospital to another.

These duties to inform nearest relatives are not absolute. In almost all cases, information is not to be shared if the patient objects.

There will occasionally be cases where these duties do not apply because disclosing information about the patient to the nearest relative cannot be considered practicable, on the grounds that it would have a detrimental impact on the patient that is disproportionate to any advantage to be gained from informing the nearest relative. This would therefore be a breach of the patient's right to privacy under the European Convention on Human Rights. The risk of this is greatest where the nearest relative is someone whom the patient would not have chosen themselves.

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
- 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.

The MHL Office will be responsible for ensuring a letter is sent to the Nearest Relative. This letter will be copied to the patient and ward or community staff to be retained on the patient's notes.

14. COMMUNICATION WITH OTHER PEOPLE NOMINATED BY THE PATIENT

Patients may want to nominate one or more people who they would wish to be involved in, or notified of, decisions related to their care and treatment.

Patients may nominate an independent mental health advocate, another independent advocate or a legal professional. But they may also nominate a relative, friend or other informal supporter.

The involvement of such friends, relatives or other supporters can have significant benefits for the care and treatment of the patient. It can provide reassurance to the patient, who may feel distrustful of professionals who are able to impose compulsory measures on them, or are relatively unfamiliar and unknown to the patient. People who know the patient well can provide knowledge of the patient and perspectives that come from long-standing and intimate involvement with the patient prior to (and during) their involvement with mental health services. They can provide practical assistance in helping the patient to convey information and views and may have knowledge of advance decisions or statements made by the patient.

Professionals should normally agree to a patient's request to involve relatives, friends or other informal supporters. They should tell the patient whenever such a request will not be,

or has not been, granted. Where a patient's request is refused, it is good practice to record this in the patient's notes, giving reasons for the refusal. It may not always be appropriate to involve another person as requested by the patient, for example where:

- Contacting and involving the person would result in a delay to the decision in question that would not be in the patient's best interests
- The involvement of the person is contrary to the best interests of the patient
- That person has requested that they should not be involved

Professionals should also take steps to find out whether patients who lack capacity to take particular decisions for themselves have an attorney or deputy with authority to take the decision on their behalf. Where there is such a person, they act as the agent of the patient, and should be informed in the same way as the patient themselves about matters within the scope of their authority.

Patients may also have advance statements in place that list the names of other people who they wish to be consulted and involved in their care. The multi-disciplinary team should check whether an advance statement is in place.

If the patient does not have an advance statement they should be assisted in completing one to be kept on record for future admissions or detentions (refer to the advance statement guidance).

15. INVOLVEMENT OF CARERS

Carers are key partners with health and care services and local authorities in providing care, especially for relatives and friends who have mental disorders (Care Act, 2014). In many instances, especially when a patient is not in hospital, the patient's carers and wider family will provide more care and support than health and social care professionals. It is important for professionals to identify all individuals who provide care and support for patients, to ensure that health and care services assess those carers' needs and, where relevant, provide support to meet them.

The Code recommends that unless there are good reasons to the contrary, patients should be encouraged to agree to their carers being involved in decisions under the Act and to them being kept informed. If patients lack capacity to consent to this, it may be appropriate to involve and inform carers if it is in the patient's best interests – although that decision must always be made in the light of the specific circumstances of the case.

In order to ensure that carers can, where appropriate, participate fully in decision-making, it is important that they have access to:

- Practical and emotional help and support to help them to participate
- Timely access to comprehensive, up-to-date and accurate information

This applies equally to children, young people or individuals with a learning disability who are supporting parents who have mental disorder. In considering the kind and amount of information which young people (especially young carers) should receive about a parent's condition or treatment, the people giving the information will need to balance the interest of

the child against the patient's right to privacy and their wishes and feelings. Any such information should be appropriate to the age and understanding of the young person.

Even if carers cannot be given detailed information about the patient's case, where appropriate they should be offered general information which may help them understand the nature of mental disorder, the way it is treated, and the operation of the Act.

If carers request that the information they provide is kept confidential, this should be respected and recorded in the patient's notes. A carer should be asked to consent to such information being disclosed. Where a carer refuses to consent, professionals should discuss with the carer the benefits of sharing information in terms of patient care and how their concerns could be addressed.

16. INFORMATION FOR PATIENTS' CHILDREN

In considering the kind and amount of information which children and young people (especially young carers) should receive about a parent's condition or treatment, the people giving the information will need to balance the interests of the child or young person against the patient's right to privacy and their wishes and feelings. Any such information should be appropriate to the age and understanding of the child or young person and provided in an appropriate format to facilitate their understanding.

17. INFORMATION FOR INFORMAL HOSPITAL PATIENTS

Although the Act does not impose any duties to give information to informal patients, these patients should have their legal position and rights explained to them.

Informal patients should be provided with relevant information (e.g. about how to make a complaint and consent requirements for treatment).

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 made aware of this right with information being provided in a format and language the patient understands. Local policies and arrangements about movement around the hospital and its grounds must be clearly explained to the patients concerned. Failure to do so could lead to a patient mistakenly believing that they are not allowed to leave hospital, which could result in an unlawful deprivation of their liberty and a breach of their human rights.

18. PROCESS OF PROVIDING INFORMATION

As soon as a patient is detained under the MHA 1983 they must be given their rights orally and in writing, unless it is not practicable¹ at that time. If this is the case, it must be documented in the nursing notes and the s132 patient rights monitoring form. This will mean that the patient should be told immediately if s/he is detained for 72 hours or less.

¹ "Practicability" includes assessing the patient's state of mind and ability to understand the information
MHL003 – Section 132, 132A and 133 Provision of Information to Detained Patients Nearest Relatives – Version 6

If the nurse providing the information considers a patient is too unwell to be given such information, or to understand or retain it, further attempts must be made and recorded on a regular basis including those on a short term section (and at least once in any 7 day period). If there are concerns these should be raised with a senior nurse. All attempts must be recorded on the form at TAD_MHL003_01.

When providing information to the patient in writing there are standard leaflets available for each section. The MHL Office will be able to provide these leaflets in other formats and languages.

It is the responsibility of the Ward Manager to ensure that any detained patient has been informed of their rights in accordance with this policy. Where possible, information should be given to a patient by a qualified nurse. This ensures that information regarding treatment issues can be answered.

When giving the patient information orally it should be explained as clearly as possible.

The nurse must complete the Patient Rights Monitoring form and return this to the Mental Health Law Office. Once checked a copy of the form must be kept in the nursing notes. All further entries regarding this procedure must be recorded on the same form.

The Mental Health Law Administrator will audit the recording of the forms and information will be provided to the Hospital Managers.

In the event that the patient is unable to receive or understand their rights, the professional responsible for giving the patient his/her rights, must incorporate this requirement into the care plan, during handover, and on the patient status at a glance board.

The patient should be read his/her rights on a daily basis until the member of staff feels that the patient understands. This must be recorded on the form provided and placed with the section papers. Once four unsuccessful attempts have been made the MHL Administrator must be informed. A referral to an IMHA will be made on the patient's behalf unless the patient has explicitly refused. Their Nearest Relative or principle carer may be involved if appropriate. Although the patient is detained under the MHA staff can refer to the Mental Capacity Act Code of Practice which advocates good practice in relation to providing information to patients who lack capacity or have fluctuating capacity.

When the patient has been given his/her rights, a record must be made in the ward diary and the patient rights monitoring form to indicate when he/she is due to have their rights revisited.

Where a patient has the need for an interpreter then a care plan should be produced and appropriate interpretation support sought throughout the period of care. Independent interpreters should always be sought but in the case of emergencies you should consult with other member of the care team or the Senior Nurse regarding the appropriateness of using relatives/carers. If this issue occurs it should be fully documented in the patient's records.

Unless the patient objects, this information must also be given in writing, to the nearest relative within a reasonable timescale. Particular attention should be paid to ensuring that Nearest Relatives understand their rights in relation to discharge. The Mental Health Law

Office will be responsible for ensuring a letter is sent to the Nearest Relative upon receipt of the completed section 132 form from nursing staff.

If it appears that the section has been discharged or the patient has been transferred prior to any attempts being made at giving the patient their statutory rights under Section 132, this will be recorded and investigated as an incident. Non-compliance with Section 132 denies both patients and their Nearest Relatives their right to apply for the discharge of the patient from detention.

Where the patient is on CTO the Responsible Clinician (or nominated deputy) must ensure their rights are explained to them orally prior to discharge onto CTO. The MHL Office will write to the patient and their nearest relative to provide them with a written copy of their rights.

19. FREQUENCY OF PROVIDING INFORMATION

In the case of emergency sections (lasting 72 hours or less) the patient should be provided with the information orally and in writing immediately. This will then be repeated as necessary.

Section 2 patients should be informed immediately and then repeated a minimum of twice per week for the first two weeks and once per week for the remainder of the section. This is of particular importance due to the patient only being able to appeal to the MHT in the first 14 days of detention.

Patients on treatment sections e.g. 3, 37, 47, 48, 37/41 (including patients who have had their CTO revoked), should be informed immediately and then repeated a minimum of once per week for the first month and then once every month for remainder of the section.

Patients on CTO should be provided with the information orally and in writing at the commencement of the CTO and this should be revisited as often as possible (minimum of twice during their current period of CTO including subsequent extension period).

A fresh explanation of the patient's rights should be considered in particular where:

- The patient is considering applying to the Tribunal, or when the patient becomes eligible again to apply to the Tribunal
- The patient requests the hospital managers to consider discharging them, or such a request is refused
- The rules in the Act about their treatment change (e.g. because three months have passed since they were first given medication, or because they have regained capacity to consent to treatment)
- Any significant change in their treatment is being considered
- There is to be a care programme approach review or S.117 meeting or its equivalent
- Renewal of their detention, or extension of their CTO is being considered
- A decision is taken to renew their detention or to extend their CTO
- A decision is taken to recall a community patient or revoke a CTO
- A decision is taken recall a conditionally discharged patient to hospital.

These minimum requirements do not prevent staff from using their judgment to decide how frequently rights need to be revisited for individual patients.

20. VICTIMS' RIGHTS

The Domestic Violence, Crime and Victims Act 2004 (DVCVA) as amended by the Mental Health Act 2007 places a number of duties on hospital managers in relation to certain unrestricted part 3 patients who have committed sexual or violent crimes. This includes ensuring the following information is communicated to victims:

- Whether a CTO is to be made, including allowing the victim to make representations on the need for a COT (and forwarding these to people responsible for making decisions on discharge), including allowing representations about the conditions attached to the CTO
- Any conditions on the CTO relating to the victim or their family, and any variation of the conditions
- When the CTO ceases
- When authority to detain the patient expires
- When the part 3 patient is discharged, including allowing the victim to make representations about discharge conditions
- What conditions of discharge relate to the victim, and when these cease?

In other circumstances, professionals should encourage (but may not require) mentally disordered offender patients to agree to share information that will enable victims and victims' families to be informed about their progress. Among other benefits, disclosure of such information can sometimes serve to reduce the danger of harmful confrontations after a discharge of which victims were unaware. Professionals should be ready to discuss with patients the benefits of enabling some information to be given by professionals to victims, within the spirit of the Code of Practice for Victims of Crime issued under the DVCVA.

21. VOTING RIGHTS

Voluntary patients on medical wards are not subject to any restrictions on their voting rights. Being in-patient does not inherently change an individual's right to vote. Moreover, patients detained under the MHA, including those on community treatment orders, have the same right to vote as anyone else.

Patients who are entitled to vote: all patients on civil sections (part 2) of the MHA and prisoners remanded to hospital under the MHA on Sections 35, 36 or 48.

Patients with a condition that may impair their capacity to vote: These individuals should be asked if they want to register to vote/want to vote and additional support offered to support them doing so. If they require assistance, they must be allowed to express their own intention of how they cast their vote. It is important that a staff member, advocate, relative or carer does not influence their voting choice. A lack of mental capacity is not a legal incapacity to vote.

Patients who are not entitled to vote: patients detained after having been convicted of committing a criminal offence and been ordered to hospital by the courts, and are subject to: z a hospital order under Sections 37, 38, 44 or 51(5) or a hospital direction under Section 45A, 46, 47 of the MHA z an order under Section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 z an order under Section 6(2) (a) or Section 14 (2) (a) of the Criminal Appeal Act 1968.21.5

Further information can be found at this link:

<http://www.rcpsych.ac.uk/pdf/RCPsych%20guidance%20on%20voting%20rights%20for%20in-patients.pdf>

22. POST

Using the Mental Health Act 1983 post sent to a patient detained in a local hospital may not be inspected, opened or withheld under any circumstances. Specific provisions in relation to this are made for special hospitals only. However, if either a detained or informal patient is sent articles of potential danger, such as weapons, or explosives through the mail, section 3(1) of the Criminal Law Act 1967 and the common law provide authority for hospital staff to take reasonable measures to prevent the patient receiving or keeping the article in his/her possession.

If staff have any suspicions or concerns that a patient's correspondence may contain an article of potential danger, they should initially speak to the patient and try to gain their consent in disclosing the package and/or contents to staff.

If the patient refuses to disclose the article staff should refer to the Search Policy and contact the Mental Health Law Office for further advice.

Section 134(1)(a) relates to local hospitals and authorises the withholding of post sent by a detained patient if the person it is addressed to has requested that communications by the patient should be withheld.

This power only relates to detained patients and no restrictions can be applied to informal patients post.

The post of a detained patient may only be withheld if the person to whom it is addressed has requested this in writing to the Hospital Managers, the Responsible Clinician in charge of the patient's treatment or the Secretary of State.

The written request should be passed to the Mental Health Law Office who will record this information and review as appropriate.

There is no power to open and inspect any outgoing post from a patient. Staff must check the address on the package only.

Full details on the procedure for inspecting and retaining post are given in the Reference Guide to the Mental Health Act 1983. The Code states that if the post has been withheld this must be recorded in writing by an officer authorised by the hospital managers, and the patient must be informed in accordance with the regulations.

23. COMPLETING THE PATIENT'S RIGHTS MONITORING FORM

Nursing staff (or for CTO patients their Care Co-ordinator or equivalent) are responsible for ensuring that the Patient's Right Monitoring Form (TAD_MHL003_02) is fully completed and that no parts of the form requesting information is left blank, for instance:

- Checking and ensuring the Nearest Relative (NR) details (including name and address) are correct
- Documenting whether we have permission from the patient to inform the NR with information/rights relating to the patient's detention under the Act
- Documenting whether or not the patient lacks capacity in this matter and whether we should inform the NR under best interests
- Documenting whether or not the patient has accepted a referral to an IMHA (patients must be provided with sufficient information on their legal right to an IMHA and how an IMHA will be able to provide support to the patient in exercising their legal rights)
- Documenting the date and time and the name of the person giving the rights
- Clearly documenting the reasons if the patient did not understand or engage in the information being given.
- A record must also be made both on the form and in the ward diary to indicate when the patient is due to have their rights revisited as per guidance note on the patient rights monitoring form.

The steps must include giving the requisite information both orally and in writing. If the patient initially fails to understand the information provided the nursing staff must persist with their efforts in an attempt to achieve the required level of understanding and continue to record each attempt on the patient rights monitoring form ensuring all the information recorded on the form is accurate each time the rights are revisited (changes in NR or NR address and whether the patient wishes the NR to be informed, including informing the patient of their legal right to an IMHA). In appropriate cases nursing staff should use an interpreter, again this should be clearly documented on the s132 patient rights monitoring form where prompted.

Where it is clear that the patient still lacks capacity after the fourth attempt then the nursing staff must sign and date the monitoring form to confirm this and the rights must be followed up, revisited and documented on a monthly basis as a minimum.

24. HOW TO MAKE A COMPLAINT

A patient and persons supporting them (e.g. a patient's nearest relative, family, carer, advocate or legal representative), especially a patient lacking capacity, must be supported to make a complaint if they think the safeguards of the Act are not being appropriately applied or they have concerns about the care and treatment being provided. Staff should be aware that it can be particularly difficult for patients and those supporting them to take

forward complaints due to their mental ill-health and fear that this may impact on the quality of care and support they receive. All efforts must be made to support patients (especially those lacking capacity) and those supporting them to make complaints without any negative impact on the quality of care and support provided.

Complaints about service provision, should be made direct to the service provider or alternatively to the service commissioner. If the complaint is in relation to a patient's care and treatment under the Mental Health Act, the complaint can be made to the service provider, service commissioner or the Care Quality Commission (CQC). If a complainant is not satisfied with the outcome, they may further pursue their complaint with the Parliamentary and Health Service Ombudsman.

Information about how to make a complaint to the Trust, CQC and the Parliamentary and Health Service Ombudsman should be made readily available to patients and their relatives and in addition, be displayed on all mental health wards. This should include specific information on the right of detained patients to complain directly to the CQC and the range of support available; and be available in alternate formats.

Information about the complaints process should also be explained to all patients, including those who lack capacity to make decisions, have difficulty communicating or whose first language is not English.

If a patient wishes to make a complaint then staff must assist them to do so

Contact details are as follows

Trust Contact Details

Complaints Manager

Pennine Care NHS Foundation Trust

St Petersfield

225 Old Street

Ashton-under-Lyne

OL6 7SR

Tel: 0161 716 3083

Email: complaints.penninecare@nhs.net

CQC Contact Details

CQC Mental Health Act

Citygate

Gallowgate

Newcastle

NE1 4PA

Tel: 03000 616161 (press option 1 for the Mental Health Team)

Email: enquiries@cqc.org.uk

Parliamentary and Health Service Ombudsman (PHSO) Contact Details

Parliamentary and Health Service Ombudsman

Millbank Tower

Millbank

London

SW1P 4QP

Tel: 0345 015 4033

Patients may also wish to contact the Patient Advice and Liaison Service (PALS) for further information or advice, or to discuss any concerns they may have. Staff must assist them to contact their local PALS.

Alternatively, the Independent Complaints Advocacy Service (ICAS) or the NHS Complaints Advocacy Service may also be contacted at:

Independent Complaints Advocacy Service (ICAS)

Tel: 0808 802 3000

NHS Complaints Advocacy Service

Tel: 0300 330 5454

In addition, qualifying patients (see paragraphs 6.8 – 6.11 of the Mental Health Act 1983 Code of Practice) may request the support of the Independent Mental Health Advocate (IMHA) in progressing a complaint. The contact details for each local borough advocacy are available from local Mental Health Law Administrators Office.

25. EQUALITY IMPACT ANALYSIS

As part of its development, this document was analysed to consider / challenge and address any detrimental impact the policy may have on individuals and or groups protected by the Equality Act 2010. This analysis has been undertaken and recorded using the Trust's analysis tool, and appropriate measures will be taken to remove barriers and advance equality of opportunity in the delivery of this policy / procedure

26. FREEDOM OF INFORMATION EXEMPTION ASSESSMENT

Under the Freedom of Information Act (2000) we are obliged to publish our policies on the Trust's website, unless an exemption from disclosure applies. As part of its development, this policy was assessed to establish if it was suitable for publication under this legislation. The assessment aims to establish if disclosure of the policy could cause prejudice or harm

to the Trust, or its staff, patients, or partners. This assessment has been undertaken using the Trust's Freedom of Information Exemption Guide, and will be reviewed upon each policy review.

27. INFORMATION GOVERNANCE ASSESSMENT

This Policy has been analysed to ensure it is compliant with relevant information law and standards as in place at the time of approval, and are consistent with the Trust's interpretation and implementation of information governance components such as data protection, confidentiality, consent, information risk, and records management.

Compliance will be reviewed against any changes to legislation / standards or at the next review of this document.

28. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they come into contact with and in cases where there are safeguarding concerns, to act upon them and protect the individual from harm.

All staff should refer any safeguarding issues to their manager and escalate accordingly in line with the Trust Safeguarding Families Policy and Local Safeguarding Children/Adult Board processes.

29. MONITORING

The effective application of this policy, including adherence to any standards identified within will be subject to monitoring using an appropriate methodology and design, such as clinical audit. Monitoring will take place on a biannual basis and will be reportable to the Quality Group via the Clinical Effectiveness and Quality Improvement Team.

The Trust will monitor the use of this policy through the Local Mental Health Law Forum and the Mental Health Law Scrutiny Group.

The Mental Health Law Scrutiny Group will be responsible for ensuring an audit of the use of this policy is carried out bi-annually.

As part of the review, monitoring and audit the Mental Health Law Manager will consider how any learning requirements will be addressed with staff.

30. REVIEW

This policy will be reviewed three-yearly unless there is a need to do so prior to this; e.g. change in national guidance.

31. REFERENCES

Department of Health (2015) Mental Health Act, 1983: Code of Practice. London; The Stationary Office

Her Majesty's Government. The Care Act, 2014. Available at <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

(last accessed 08.01.2016).