Pennine Care
NHS Foundation Trust

DOCUMENT CONTROL	
Title:	**Exclusion of Visitors to Detained Patients in Hospital**
Version:	**5**
Reference Number:	**MHL004**

Scope:

This policy applies to:

All hospital staff employed by Pennine Care NHS Foundation Trust whose work directly or indirectly involves patients subject to the Mental Health Act (MHA) 1983.

Purpose:

This policy aims to ensure compliance with the Mental Health Act (1983) and the associated Code of Practice in relation to the visiting of patients in hospital and subject to certain provisions, the circumstances where it may be necessary to consider the exclusion of a visitor or visitors.

Requirement for Policy

Mental Health Act Code of Practice (2015)

Keywords:

Exclusion of Visitors, Mental Health Act, detention, access, ward visits

Supersedes:

Version 4

Description of Amendment(s):

- Transferred onto new Trust template and moved to MHL policy Set (Was CL006)
- Appendices designed as TAD and hyperlinked to policy

Owner:

Mental Health Law Manager – Mia Majid

Individual(s) & group(s) involved in the Development:

This document has been developed in collaboration with the following interested parties:

- Mental Health Law Scrutiny Group
- Acute Care Forum
- Local Borough wide forums

Individual(s) & group(s) involved in the Consultation:	
The document has been circulated for consultation and comments have been taken into consideration and the document amended accordingly: • Mental Health Law Scrutiny Group • Acute Care Forum • Local Borough wide forums	
Equality Impact Analysis:	
Date approved: **Reference:**	No Change to Policy
Freedom of Information Exemption Assessment:	
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Policy Panel:	
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Policy Management Team tasks:	
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Review:	
Next review date: **Responsibility of:**	August 2021 Mental Health Law Manager

Other Trust documentation to which this Policy relates (and when appropriate should be read in conjunction with):	
CL087	Victims Policy
CL040	The Management of Suspected Illicit Controlled Drugs on Trust Premises
CL063	Patients' Property Policy and Procedure
CL062	Mobile Phones and Tablets Policy

CO029	Child Visiting Policy
CO038	Violence Reduction Policy: Positive and Proactive Interventions
Policy Associated Documents:	
TAD_MHL004_01	Detention letter to patient under relevant Section of Mental Health Act 1983
TAD_MHL004_02	Section 134 – Mental Health Act - Parcels and Letters withheld
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.

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

All detained patients are entitled to maintain contact with and be visited by anyone they wish to see, subject only to some carefully limited exceptions. Maintaining contact with friends and relatives is recognised as an important element in a patient's treatment and rehabilitation. The decision to prohibit a visit by a person whom the patient has requested to visit or agreed to see should be regarded as a serious interference with the patient's human rights and to be taken only in exceptional circumstances. This should only occur after other means to deal with the problem have been exhausted.

Hospital authorities have the right to control who is allowed to be at the hospital and under what circumstances. Under common law, visitors to a hospital are licensees and the person who has responsibility for a hospital ward can, on behalf of the hospital and at their absolute discretion, withdraw the license and request the visitor to leave. If the visitor does not leave the ward on such a request being made, he / she becomes a trespasser and reasonable force can be used to remove him, including calling the police for assistance[1].

Visitors may be asked to leave if their behaviour causes disturbance to other patients and staff.

The Trust operates a zero tolerance policy relating to any kind of violence or aggression towards, staff, patients or members of the public.

2. PURPOSE

This policy aims to ensure compliance with the Mental Health Act (1983) and the associated Code of Practice in relation to the visiting of patients in hospital and subject to certain provisions, the circumstances where it may be necessary to consider the exclusion of a visitor or visitors.

This policy applies to:

- All hospital staff employed by Pennine Care NHS Foundation Trust whose work directly or indirectly involves patients subject to the MHA.
- All hospital patients detained under the Mental Health Act (MHA) 1983 and their visitors.

3. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

Hospital Managers

The Mental Health Act 1983 requires the Trust's Hospital Managers have in place policy, procedures and guidelines in respect of the exclusion and or restriction of visitors to detained patients.

[1] Tort Law – Trespass to Land

Executive Director of Nursing, Healthcare Professionals & Quality Governance

The Executive Director of Nursing, Healthcare Professionals & Quality Governance is the accountable Director for this policy.

The Unit/Ward Manager

The Unit/Ward Manager has management responsibility for ensuring this policy is implemented.

4. DEFINITIONS AND TERMINOLOGY

The term “hospital” as in the Mental Health Act 1983 (MHA) refers to all NHS residential Mental Health and Learning Disability Units.

The term “hospital manager” as defined by the Mental Health Act 1983, refers to the board of non-executive directors and associate managers in whose name all detained patients are detained and who are also accountable for the monitoring of the services and actions that are under taken by service managers.

Article 8: Article 8 is a section of the European Convention on Human Rights and refers to:

- Everyone has the right to respect for his private and family life, his home and his correspondence.
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

5. THE RIGHT TO BE VISITED

All detained patients are entitled to maintain contact with and be visited by anyone they wish to see, subject only to some carefully limited exceptions. Maintaining contact with friends and relatives is recognised as a key element in a patient’s care, treatment and recovery. Article 8 of the European Convention on Human Rights (ECHR) protects the right to a family life.

The decision to prohibit a visit by any person whom the patient has requested to visit or has agreed to see should be regarded as a serious interference with the rights of the patient and a blanket restriction may be considered a breach of their Article 8 rights. There may be circumstances when a visitor has to be excluded, but these instances should be exceptional and any decision should be taken only after other means to deal with the problem have been considered and (where appropriate) tried. Any such decision should be fully documented and include the reasons for the exclusion, and it should be made available for independent scrutiny by the Care Quality Commission (CQC) or service

commissioner, and explained to the patient. Hospital managers should review the effect on the patient of any decision to restrict visits.

The Act gives certain people the right to visit patients in private if they wish. This includes second opinion appointed doctors (SOADs), independent doctors, approved clinicians appointed to examine the patient in relation to application or reference to the Tribunal, people visiting on behalf of the CQC, approved mental health professional and independent mental health advocates (IMHAs).

Hospital managers must ensure that such visits can take place in private, if that is what the patient concerned wants. If there are particular concerns for the security of the visitor, they should be discussed with the visitor with a view to agreeing suitable security arrangements. For the safety of both visitors and patients, visitors should only be in clinical areas under supervision.

Behavioural disturbance can be minimalized by promoting a supportive and therapeutic culture within the care environment, in which anti-social behaviour is anticipated, diffused, redirected and minimised (see CO38 Violence Reduction Policy: Positive and Proactive Interventions).

Hospital managers should also ensure that patients can communicate with their legal representatives in private, and should facilitate visits by those representatives when they request them.

6. GROUNDS FOR EXCLUDING A VISITOR

There are circumstances where hospital managers may restrict visitors, refuse them entry or require them to leave. Managers should have a policy on the circumstances in which visits to patients may be restricted, to which both clinical staff and patients may refer, which should be clearly displayed on the ward.

There are two principal grounds which may justify the exclusion of a visitor:

- **Restriction or exclusion on Clinical Grounds:**

  The patient's responsible clinician may decide, after assessment and discussion with the multi-disciplinary team, that some visits could be detrimental to the safety or wellbeing of the patient, the visitor, other patients or staff on the ward.

  The grounds for any decision by the responsible clinician, taken after full discussion with the patient's multi-disciplinary care team, should be clearly documented and explained to the patient and the person concerned, verbally and in writing (subject to the normal considerations of patient confidentiality). Wherever possible 24-hours notice should be given of this decision. Reasonable conditions rather than exclusion may be put in place to facilitate visits if necessary.

- **Restriction on Security Grounds:**

  The behaviour of a particular visitor may be, or have been in the past, disruptive to a degree that exclusion from the hospital is necessary as a last resort. Examples of such behaviour include:

- Incitement to abscond
- Smuggling of illicit substances into the hospital or unit(please also refer to Trust policy CL40 The Management of Suspected Illicit Controlled Drugs on Trust Premises)
- Transfer of potential weapons
- Unacceptable aggression, and
- Attempts by members of the media to gain unauthorised access.

A decision to exclude a visitor on the grounds of their behaviour should be fully documented and explained to the patient verbally and in writing. Where possible and appropriate the reason for the decision should be communicated to the person being excluded (subject to the normal considerations of patient confidentiality and any overriding security concerns). This communication should also include reference to the Trust's complaints process.

Restricting visitors to informal patients who lack capacity to decide whether to remain in hospital could amount or contribute to a deprivation of liberty or a breach of the individual's human rights. It may indicate that a deprivation of liberty (DoL) authorisation or Court of Protection order under the deprivation of liberty safeguards of the Mental Capacity Act 2005 may need to be sought or formal admission under the Act. Please contact your local MHL Office for further advice.

The exclusion of a visitor to a detained patient will not contravene the European Convention on Human Rights if one of the grounds in Article 8(2) of the Convention is satisfied.

7. CHILDREN AND YOUNG PEOPLE

The best interests and safety of the children and young people concerned are paramount and visits by children and young people will not be allowed if it is not in their best interests. Within that overarching framework and subject to risk assessments, the ability of children and young people to have contact with friends and family and the offer of privacy within which that can happen should be facilitated.

Information about visiting should be explained to children and young people in a way that they are able to understand. Environments that are friendly to children and young people should be provided.

Where a child or young person is being detained, it should not be assumed, because of their age, that they would welcome all visitors, and like adults their views should be sought.

Additional information is available in the Child Visiting Policy (CO29).

8. ADDITIONAL SUPPORT FOR VICTIMS WHO ARE FAMILY, CARERS OR FRIENDS

Staff should be particularly mindful that some victims of mental disordered patients may also be the patient's family member, carer, friend, or their nearest relative, and may wish to maintain contact with the patient, including visiting them in hospital. The guidance in relation to enabling contact and visits should be applied equally to these individuals as to other family, friends and carers. Staff may need to balance the needs and rights of victims who are also family, friends or carers with their needs and rights as victims and/or to reduce the risk of harm arising from contact with the patient. Such victims may require additional support in order for them to maintain contact, and keep them safe, especially if the victim is a child or young person, lacks capacity or has a learning disability or autism.

Hospital managers must ensure that they fulfil the terms specified in the European directive on minimum standards on rights, support and protection of victims of crime in any of their interactions with victims of a Part 3 patient.

There may be a family member, friend and carer who is a victim or for other reasons does not wish to maintain contact or visit, despite a Part 3 patient's wish for them to do so. The rights of the individual victim should be protected and maintained in this and, if appropriate, this should be explained to the patient.

9. FACILITATION OF VISITING

The hospital should be sufficiently flexible to enable regular visits to the patient, if he or she wishes. Ordinarily, inadequate staff numbers should not be allowed to deter regular visiting. The facilities provided for visitors should be comfortable and welcoming, and for children, child-friendly. Consideration should be given to meeting the needs of visitors who have travelled long distances, including flexibility of visiting times and how and where refreshments can be obtained. Similarly, where a decision is being considered to place a patient out of area, further consideration should be given to considering the visiting needs of the patient, family and carers.

Inpatient units may produce their own procedures to take into account local needs. All visiting will be at the discretion of the Clinical Lead based on a risk assessment of the unit.

10. OTHER FORMS OF COMMUNICATION AND WITHHOLDING LETTERS AND PARCELS

Every effort must be made to assist the patient, where appropriate, to make contact with relatives, friends and supporters. In particular, patients will have access to day time telephone facilities. However, if a complaint is received regarding nuisance telephone calls from a detained patient, consideration will be given to allowing access to a telephone in the ward office in an effort to restrict the amount of calls made, but still allowing for privacy. If this action is required, this will be clearly documented in the patient's notes. With regards to the use or restriction of the use of mobile phones, personal e-mail and internet access equipment, staff must access the following policies in order to comply with the Trust procedure, which can be brought to the attention of the person concerned.

- Trust Patients, Clients and Residents Policy for handling, money, valuable and property – CL63 Patients' Property Policy and Procedure
- Use of Mobile Phones/Tablets by people who use our service and visitors in clinical areas – CL62 Mobile Phones and Tablets Policy.

Section 134 of the MHA provides the power to withhold detained patients' outgoing or incoming post. ***The provision for withholding post addressed to patients however only applies to high security psychiatric hospitals***. Hospitals other than high security hospitals, may only withhold outgoing post if the recipient requests this in writing to the 'hospital managers', the patient's responsible clinician, or the Secretary of State, that the post should be withheld. otherwise, Section 3(1) of the Criminal Law Act 1967, and common law, may provide the authority for hospital staff to take reasonable measures to prevent the patient from receiving or keeping articles of potential danger in his/her possession, eg: weapons, explosives, or matches etc. Note also that the Malicious Communications Act of 1988 allows for the prosecution of anyone who sends or delivers letter or other articles if their intention is to cause anxiety or distress. In other situations where the 'duty of care' suggests staff should restrict letters being sent out by any patient or restrict letters coming in, staff must obtain legal advice from the Trust Security Manager and or the Trust Solicitor/Mental Health Law Manager in the first instance.

For these purposes, detained patients include patients detained under any provision of the Act, except patients on community treatment orders (CTOs) who have been recalled to hospital.

The Act refers to post as 'postal packets' which has the same meaning as in the Postal Services Act 2011, ie a letter, parcel, packet or other article transmissible by post. The power to withhold a postal packet also applies to anything contained in it.

No restrictions will be placed upon dispatch and receipt of letters and parcels, unless someone e.g. an addressee has asked in writing that they may not be sent.[2] If a request is received, from the addressee, or other, to stop a letter or parcel being sent, the Hospital Managers delegate the duty to the nurse in charge of the ward the patient is detained on, who must inform the appropriate Mental Health Law Administrator who will discuss this with the Responsible Clinician. Once a decision is made regarding the withholding of a letter or parcel, the patient will be notified of this in writing. All letters and parcels withheld should be listed and a copy of the list held on the patient's record. The list should include the date and grounds on which it was withheld; the name of the appointed person who withheld it; and a description of the item withheld and where this has been placed for security/retrieval purposes. (See Form TAD_MHL004_02).

If anything in a letter or other postal packet is withheld, but the rest is allowed to go on to the addressee, the appointed person must also place a notice in it before resealing it. That notice should state:

- That the letter or packet has been opened and inspected and an item or items withheld.

[2] Section 134 MHA (1)

- The grounds on which any item has been withheld, this is not required when it is withheld at the request of the addressee
- A description of any item withheld
- The name of the appointed person and the name of the hospital, and
- An explanation of the right to ask the CQC to review the decision and the steps the CQC may take as a result.

The patient, or where applicable, the person who sent it, if known, must also be given the same information in writing within seven days.

Where a whole letter or packet is withheld, except at the request of the addressee, the patient and, where applicable, the person who sent it, if known, must be sent a written notice within seven days stating:

- That the letter or packet has been withheld
- The grounds on which it has been withheld
- A description of the contents of the letter or packet withheld
- The name of the appointed person who withheld it and the name of the hospital, and
- An explanation of the right to ask the CQC to review the decision and the steps CQC may take as a result.

In practice, because a patient can ask the CQC to review the decision within six months of receiving this notice, anything addressed to a patient which is withheld should be retained for at least six months, unless it is necessary to give it to the police or other similar body. After that – assuming the CQC is not in the process of reviewing the decision – it may be returned to the sender, if that can be done safely.

The CQC can direct that what was withheld should no longer be withheld. The managers must comply with any such direction.

11. 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

12. 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.

13. 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.

14. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they come into 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.

15. MONITORING

Hospital Managers will regularly monitor the exclusion from the hospital of visitors to detained patients. This monitoring will take place through the Acute Care Forum and the Mental Health Law Forums in each area.

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.

16. 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.

17. REFERENCES

Department of Health (2015) Mental Health Act 1983: Code of Practice

Department of Health (2015) Reference Guide to the Mental Health Act