

Mental Health Act Overarching Policy

This policy provides the Trust's statement of intent in its application of and compliance with the statutory and regulatory provisions of the Mental Health Act 1983 and Code of Practice (2015). It also includes the Delegation of Powers instructions.

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Name of Author:	Alison Wheelton, Senior Mental Health Act Administrator
Name of responsible Committee:	Legislative Group
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Target audience:	Employees of LPT who have responsibility under the Act.
Type of Policy	Clinical
Which Relevant CQC Fundamental Standards?	Person-centred care Dignity & Respect Consent Safety Good governance Fit & proper staff Duty of Candour

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Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
2	October 2007	Revised following revision of Mental Health Act and associated Codes
3	September 2014	Revision following revision of Trust assurance of MH
4	April 2015	Revision following revision of Code of Practice and Guide
5	April 2016	Revision following review of Terms of Reference of the Trust MHAAC
6	April 2018	Revision following policy expiry date
7	October 2019	Changes to Governance Reporting

For further information contact:

The MHA Office

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Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all.

This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

In carrying out its functions, LPT must have due regard to the different needs of different protected equality groups in their area.

This applies to all the activities for which LPT is responsible, including policy development and review.

Due Regard

The Trust's commitment to equality means that this policy has been screened in relation to paying due regard to the Public Sector Equality Duty as set out in the Equality Act 2010 to eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity and foster good relations. And as such this particular

policy has no specific impact on any protected characteristic or equality group.

This is evidenced by the fact that every effort will be made to support the patient in understanding their rights under section 132 of the Mental Health Act and by the provision of supporting information both verbally and in writing in a format that the patient is able to understand.

That being the fact, the information is available in a different media designed specifically to assist patients in their understanding, for example, in different languages or different formats such as easy-read.

Support will also be provided through the use of interpreters and through the support of the Independent Mental Health Advocacy Service in accordance with the provisions of the Act.

Where a patient is deemed not to have the capacity to understand the information being provided this will be repeated at appropriate intervals.

Equality monitoring of all relevant protected characteristics to which the policy applies will be undertaken where relevant.

Definitions that apply to this Policy

MHA	Mental Health Act 1983
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1.0. Purpose of the Policy

The purpose of this policy and related procedural documents is to provide all permanent employees of LPT, together with those on bank, agency or honorary contracts with clear guidance in their application of '*the Act*' (Mental Health Act 1983) in order that the Board may be assured of their responsibilities in terms of compliance with the legislative requirements of the Act.

Employees as described above are expected to work within the guidance provided here and within the associated documentation.

2.0. Summary and Key Points

This policy provides Leicestershire Partnership Trust's (LPT) over-arching statement of intent in its application and adherence to the legislative requirements of the Mental Health Act (MHA) 1983 and associated good practice as defined in the accompanying Code of Practice.

3.0. Introduction

The MHA provides a legal framework within which clinicians can intervene where necessary to protect people with mental disorder themselves and, sometimes, to protect other people as well. However, with the power to intervene compulsorily comes the responsibility to do so only where it is right and to the highest possible standards.

The Trust remains responsible for the delivery of care and treatment for all patients in receipt of its services. Where those patients remain subject to the provisions of the Act, the Trust has a statutory responsibility to ensure those provisions are met.

The principles that guide the application of the Act are set out at the front of the accompanying Code of Practice. Compliance with the statutory requirements of the Act are also very much reliant on compliance with those principles and with the guidance contained in the Code itself.

As such the Trust writes all relevant policy and procedural documents in accordance with the Code (and Guiding Principles). These documents can be found as appendices to this Policy.

The Guiding Principles are as follows:

- **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
- **Empowerment and involvement**
Patients should be given the opportunity to be involved in planning, developing and reviewing their own care and treatment to help ensure that it is delivered in a way that is as appropriate and effective for them as possible.

- **Respect and dignity**
Patients and carers should be treated with respect and dignity. Practitioners performing functions under the Act should respect the rights and dignity of patients, and their carers while also ensuring their safety and that of others.
- **Purpose and effectiveness**
Care, support and treatment under the Act should be given in accordance with up-to-date national guidance and/or current best practice from professional bodies where this is available.
- **Efficiency and equity**
Commissioners and providers, including their staff, should give equal priority to mental health as they do to physical conditions.

4.0 Flowchart/process chart

The Trust has in place appropriate governance arrangements to monitor and review the way that functions under the Act are exercised on its behalf (with agreed Terms of Reference).



5.0 Duties within the Organisation

In England, NHS hospitals are managed by NHS trusts and NHS foundation trusts. For these hospitals (including acute/non-mental health hospitals), the trusts themselves (or 'the Board') are defined as the 'hospital managers' for the purposes of the Act and shall be referred to as such throughout the remainder of this section.

The Trust retains the authority to detain patients under the Act. They have the primary responsibility for seeing that the requirements of the Act are followed. In particular, they must ensure that patients are detained only as the Act allows, that their treatment and care accord fully with its provisions, and that they are fully informed of, and are supported in exercising, their statutory rights. This is also applicable to Community Treatment Order patients, even if those patients are not actually being treated at one of their hospitals.

In practice, most of the decisions of the Trust are actually taken by individuals (or groups of individuals) on their behalf and this is detailed within The Trust Scheme of

Delegation.

The Trust remains responsible for the performance of all its functions exercised on their behalf and must ensure that the people acting on their behalf are competent to do so.

Divisional Directors and Heads of Service are responsible for ensuring that comprehensive arrangements are in place regarding adherence to this policy and how the application of the Act is managed within their own Department or Service in line with the guidelines in this policy. They will ensure that team managers and other management staff are given clear instructions about policy arrangements so that they in turn can instruct staff under their direction. These arrangements will include ensuring that all staff has access to this policy, and maintaining a system for recording that policies and procedures have been distributed to and received by staff within the Department/Service and for having these records available for inspection upon request for audit purposes.

Managers and Team leaders are responsible for providing advice and support to staff on the application of this policy and associated procedure within their service areas, and are responsible for ensuring all clinical staff have been trained to the required standards and retain responsibility for ensuring that the policy is followed and understood as appropriate to each staff member's role and function.

This information must be given to all new staff on induction. It is the responsibility of local managers and team leaders to have in place a local induction that includes policies and procedures ensuring that the staff understand how and where to access current policies and procedures via Intranet and ensuring that a system is in place for their area of responsibility that keeps staff up to date with the policy and any recommended training related to it.

All staff (including seconded staff) should be aware that despite the above responsibilities of senior staff, every staff member has an individual duty of responsibility to ensure that they know where to locate the policy when necessary. All staff should be aware of how policies and procedures impact on their practice and be able to follow the specified requirements set out.

6.0 Training needs

There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as mandatory training.

The operational management of the MHA will include on-going training managed through the Learning and Development Centre who will provide monthly attendance reports to the MHAAC.

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
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Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
6	Qualified mental health nurses working at Band 5 and above must attend MHA training once every three years.	Mandatory training reports provided by the Learning & Development	Routine reports of uptake rates monitored bi-monthly	MHAAC	Bi-monthly

7.0 Monitoring Compliance and Effectiveness

The MHA Code of Practice 2015 at Chapter 37 states the following:

37.11 The 'Trust' should put in place appropriate governance arrangements to monitor and review the way that functions under the Act are exercised on its behalf. Many organisations establish a Mental Health Act steering or scrutiny group especially for that task, and whilst recognising that the Act is a legal framework for the delivery of care, also monitor and review via clinically-focussed forums. Ideally, such forums should have representation from the Board or registered manager.

The MHAAC monitors the reporting of risk through established Trust procedures i.e. the Risk Register.

8.0 Standards/Performance Indicators

The CQC will test application of the Code of Practice Trust-wide as part of their Inspection Programmes and as part of their focused MHA Reviewer visits for detained patients, which are broader than the remit of this overarching policy document.

Section 7.0 outlines local performance monitoring for the effectiveness of this policy.

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
As above section 7.0	

9.0. References and Bibliography

Policy was drafted with reference to the following:

The Mental Health Act (MHA) 1983
The Code of Practice (2015).
Equality Act 2010

Due Regard Screening Template

Section 1	
Name of activity/proposal	MHA Overarching Policy
Date Screening commenced	April 2016
Directorate / Service carrying out the Assessment	Quality
Name and role of person undertaking this Due Regard (Equality Analysis)	Regulation and Assurance Lead
Give an overview of the aims, objectives and purpose of the proposal:	
<p>AIMS: The purpose of this policy and related procedural documents is to provide all permanent employees of LPT, together with those on bank, agency or honorary contracts with clear guidance in their application of the Act in order that the Board may be assured of their responsibilities in terms of compliance with the legislative requirements of the Act.</p> <p>Employees as described above are expected to work within the guidance provided here and within the associated documentation.</p>	
<p>OBJECTIVES: This policy provides Leicestershire Partnership Trust's (LPT) over-arching statement of intent in its application and adherence to the legislative requirements of the Mental Health Act (MHA) 1983 and associated good practice as defined in the accompanying Code of Practice.</p> <p>The content of this Policy should be considered and applied by all staff in conjunction with the relevant procedural documents detailing specific areas of the MHA and attached to this document as appendices</p>	
<p>PURPOSE: The purpose of this policy and related procedural documents is to provide all permanent employees of LPT, together with those on bank, agency or honorary contracts with clear guidance in their application of the Act in order that the Board may be assured of their responsibilities in terms of compliance with the legislative requirements of the Act.</p>	
Section 2	
Protected Characteristic	<p>Could the proposal have a positive impact</p> <p>Yes or No (give details)</p>

Age	Awareness of the Overarching MHA Policy in the context of those patients in receipt of mental health services, and subject to the MHA.		
Disability	Awareness of Overarching MHA Policy in the context of the delivering patient care. This policy supports the application of best practice lawful standards for staffs application of the MHA and for those patients who are subject to the MHA or those in receipt of mental health services.		
Gender reassignment	Awareness of the MHA in the context of mental health service delivery		
Marriage & Civil Partnership	Awareness of the MHA in the context of mental health service delivery		
Pregnancy & Maternity	Awareness of the MHA in the context of mental health service delivery		
Race	Awareness of the MHA in the context of mental health service delivery		
Religion and Belief	Awareness of the MHA in the context of mental health service delivery		
Sex	Awareness of the MHA in the context of mental health service delivery		
Sexual Orientation	Awareness of the MHA in the context of mental health service delivery		
Other equality groups?	Awareness of the MHA in the context of mental health service delivery		
<p>Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.</p>			
High risk: Complete a full EIA starting click here to proceed to Part B		Low risk: Go to Section 4.	<input checked="" type="checkbox"/>
Section 4			
<p>If this proposal is low risk please give evidence or justification for how you reached this decision:</p>			

Patients who are subject to lawful detention under the MHA 1983 or patients in receipt of Mental health services should expect employers and employees to work within best practice standards as defined by the MHA Code of Practice (2015) and

- Not to discriminate against patients who are subject to the Act
- Not to compromise the privacy and dignity of patients subject to the Act and to ensure patients can access the means to undertake private discussions when seeking personal support
- Provide support and monitor mandatory training uptake rates of those staff working in mental health services to ensure adherence and correct application of best practice standards as outlined in the MHA Code of Practice (2015)
- To ensure that measures are in place to monitor application of the MHA for patients subject to its lawful restrictions
- To provide support to detained patients to ensure that any communication needs are met i.e. translation services
- To offer independent support to detained patient via local advocacy services
- The provision of local expertise via a Mental Health Act Office for the purposes of supporting staff to apply best practice standards Mon-Fri

Signed by reviewer/assessor	A Wheelton	Date	April 2018 Re-assessed January 2020
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
Head of Service Signed	H Wallace	Date	April 2018

Appendix 2 - Training Requirements

Training Needs Analysis

Training Required	YES	NO
Training topic:	Mental Health Act 1983 and associated Code of Practice	
Type of training: (see study leave policy)	<input checked="" type="checkbox"/> Mandatory (must be on mandatory training register) <input type="checkbox"/> Role specific <input type="checkbox"/> Personal development	
Division(s) to which the training is applicable:	<input checked="" type="checkbox"/> Adult Mental Health & Learning Disability Services <input checked="" type="checkbox"/> Community Health Services <input type="checkbox"/> Enabling Services <input checked="" type="checkbox"/> Families Young People Children <input type="checkbox"/> Hosted Services	
Staff groups who require the training:	<i>Mental health clinicians</i>	
Regularity of Update requirement:	Once every 3 years for qualified mental health nurses (Band 5 and above) Once every two years for senior medics	
Who is responsible for delivery of this training?	MHA Office Medical directorate team	
Have resources been identified?	Yes	
Has a training plan been agreed?	Yes	
Where will completion of this training be recorded?	<input checked="" type="checkbox"/> ULearn <input type="checkbox"/> Other (please specify)	
How is this training going to be monitored?	LEGISLATIVE COMMITTEE	

Appendix 3 - The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

Shape its services around the needs and preferences of individual patients, their families and their carers	<input type="checkbox"/>
Respond to different needs of different sectors of the population	<input type="checkbox"/>
Work continuously to improve quality services and to minimise errors	<input checked="" type="checkbox"/>
Support and value its staff	<input type="checkbox"/>
Work together with others to ensure a seamless service for patients	<input type="checkbox"/>
Help keep people healthy and work to reduce health inequalities	<input checked="" type="checkbox"/>
Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance	<input checked="" type="checkbox"/>

Appendix 4- Stakeholders and Consultation

CONTRIBUTION LIST

Key individuals involved in developing the document

Name	Designation
Alison Wheelton	Senior MHA Administrator

Circulated to the following individuals for comments

Name
Members of the Legislative Committee

DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</p> <p>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</p>		
Name of Document:	Mental Health Act Overarching Policy	
Completed by:	Alison Wheelton	
Job title	Snr MHA Administrator	Date January 2020
Screening Questions	Yes / No	Explanatory Note
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	No	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	No	
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	No	
8. Will the process require you to contact individuals in ways which they may find intrusive?	No	
<p>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via Lpt-dataprivacy@leicspart.secure.nhs.uk</p> <p>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</p>		
Data Privacy approval name:		
Date of approval		