

Section 5 – Holding Powers Policy

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Please contact the Equality, Diversity and Human Rights Team on 01903 845724 or email
equality.diversity@sussexpartnership.nhs.uk**

1. Equality and Human Rights Impact Analysis (EHRIA)

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1.1 Board Lead:	Dominic Ford	1.2 Analysis Start Date:	October 2013
		1.3 Analysis Submission Date:	Submission 1 - 05/11/2013 Submission 2 – 05/09/2015 Submission 3 – 10 August 2017 Submission 4 - 1 June 2020
1.4 Analysis Team Members:	1) Author / Editor: Jolene Pont 2) Frontline Staff: Clinical teams 3) I, being the author acknowledge in good faith that this analysis uses accurate evidence to support accountable decision-makers with due regard to the National Equality Duties, and that the analysis has been carried out throughout the design or implementation stage of the service or policy.		
1.5 If this is a cross agency policy/service or strategy please indicate partner agencies and their formal title			
1.6 Completion Statement			
1.7 Policy Aim	To provide Trust staff with a clear policy and procedure to follow to ensure the Trust fulfils its obligations under Section 5 of the Mental Health Act 1983.		
⚠ Send draft analysis along with the policy, strategy or service to equality.diversity@sussexpartnership.nhs.uk for internal quality control prior to ratification.			
1.8 Quality Assessor sign off	Cassandra Blowers		

2. Evidence Pre-Analysis – The type and quality of evidence informing the assessment

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X	2.1 Types of evidence identified as relevant have X marked against them	
	Patient / Employee Monitoring Data	Risk Assessments
X	Recent Local Consultations	Research Findings
	Complaints / PALS / Incidents	DH / NICE / National Reports
	Focus Groups / Interviews	X Good Practice / Model Policies
	Service User / Staff Surveys	Previous Impact Analysis
	Contract / Supplier Monitoring Data	X Clinical Audits
	Sussex Demographics / Census	Serious Untoward Incidents
X	Data from other agencies, e.g. Services, Police, third sector	X Equality Performance Hub

Please provide detailed evidence for the areas

- Mental Health Act 1983 and the associated Code of Practice;
- CQC MHA feedback following MHA inspections;
- Previous policies: Sections 5(4) – Nursing Holding Power and Section 5(2) – Doctors Holding Power.
- Equality Performance Hub includes data on detention across the protected characteristics

3. Impact and outcome Evaluation – Any impacts or potential outcomes are described below.

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Ref	Mark one X		Describe how this policy, strategy or service will lead to positive + outcomes for the protected characteristics . Describe how this policy, strategy or service will lead to negative - outcomes for the protected characteristics . (Please describe in full for each)	People's Characteristics (Mark with 'X'):								
	+	-		Age	Disability & Carers	Gender Reassignment	Pregnancy & Maternity	Race	Religion & Belief	Sex	Sexual Orientation	Human Rights
3.1	X		Alternative formats access statement included on front page.	X	X			X				
3.2	X		This is an internal policy setting out the procedural functions related to the implementation of the Section 5 holding powers. This policy enables the Trust to meet its obligations under the Law and associated guidance by specifying what is required by the law to enable clinical staff to exercise their powers within the parameters prescribed by law, across all protected characteristics without exception.	X	X	X	X	X	X	X	X	X
3.3		X	This policy outlines when a person's liberty may be removed. This is clearly a restriction of liberty, but permissible if the powers under Section 5 are used as defined by the Mental Health Act 1983.									X
3.4	X		Policy is positive in its language and identifies that statistically women, single patients and those identifying as BME are more likely to be detained under holding powers of s.5. Staff should consciously ensure that these individuals are not disproportionately affected by the obligations under the law.	X	X	X	X	X	X	X	X	

Ref	Mark one X		Describe how this policy, strategy or service will lead to positive + outcomes for the <u>protected characteristics</u> . Describe how this policy, strategy or service will lead to negative - outcomes for the <u>protected characteristics</u> . (Please describe in full for each)	People's Characteristics (Mark with 'X'):								
	+	-		Age	Disability & Carers	Gender Reassignment	Pregnancy & Maternity	Race	Religion & Belief	Sex	Sexual Orientation	Human Rights
3.5	X		The policy states that all patients should be informed orally and in writing of the reasons why they are detained. Information is provided in alternative formats or languages where necessary (braille, easy read etc)	X	X			X				

Add more rows if necessary with new reference numbers in the left column

4. General Duty – Due Regard

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Describe how this policy, strategy or service will show due regard for the three aims of the general duty across the protected characteristics listed. Please describe in full. (Please make sure that you address each of the protected characteristics in your answers)		People's Characteristics (Mark with 'X'):								
		Age	Disability & Carers	Gender Reassignment	Pregnancy & Maternity	Race	Religion & Belief	Sex	Sexual Orientation	Human Rights
4.1	Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; Help	This policy ensures compliance with the law under the MHA 1983 and code of practice. Patients are detained under the MHA 1983 because they meet statutory criteria for detention and not on the basis (directly or indirectly) of any of the protected characteristics. The Trust is aware that different racial and ethnic groups, women and single patients are more likely to be detained and the policy needs to address that it should not have a different impact on any of these.	X	X	X	X	X	X	X	X
4.2	Advance equality of opportunity between people from different groups; Help	As above.	X	X	X	X	X	X	X	
4.3	Foster Good relations between people from different groups Help	It is necessary that the policy is positive in its language in recognising diversity of patients. The policy needs to address that where patients might have additional needs due to their protected characteristics, these will be resourced where practically possible. The policy also needs to address that acting in person's best interest also includes taking into account person's diversity.	X	X	X	X	X	X	X	

Add more rows if necessary with new reference numbers in the left column

5. Monitoring Arrangements

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5.1 The arrangements to monitor the effectiveness of the policy, strategy or service considering relevant characteristics? E.g.
 ↘ survey results split by age-band reviewed annually by EMB and Trust Board
 ↘ Service user Disability reviewed quarterly by Equality and Diversity Steering Group or annually in the EDHR Annual Report

Implementation of the Section 5 holding powers is recorded on statutory documentation as required by the Mental Health (Hospital, Guardianship and Treatment)(England) Regulations 2008. Responsibility for scrutinising the statutory paperwork is delegated by the Trust Board to the Mental Health Act Services team. Use of Section 5 is monitored by the Mental Health Act Committee.

The CQC routinely monitor use of Section 5 and compliance with Trust policy, areas of non-compliance are raised in their report and these are reported through the MHA Committee to the Board. Giving due regard to the above, the policy will also be kept under review by the Director of Corporate Governance. Detention based on s.5 is also monitored by the E&D team across protected characteristics. Findings are published annually in the Equality Performance Hub.

6. Human Rights Pre-Assessment

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The Impacts identified in sections () have their reference numbers (e.g. 4.1) inserted in the appropriate column for each relevant right or freedom

	+	-
A2. Right to life (e.g. Pain relief, DNAR, competency, suicide prevention)		
A3. Prohibition of torture, inhuman or degrading treatment (e.g. Service Users unable to consent)		
A4. Prohibition of slavery and forced labour (e.g. Safeguarding vulnerable patients policies)		
A5. Right to liberty and security (e.g. Deprivation of liberty protocols, security policy)	3.2	3.3
A6&7. Rights to a fair trial; and no punishment without law (e.g. MHA Tribunals)		
A8. Right to respect for private and family life, home and correspondence (e.g. Confidentiality, access to family etc)	3.1, 3.2, 3.4, 3.5	
A9. Freedom of thought, conscience and religion (e.g. Animal-derived medicines/sacred space)		
A10. Freedom of expression (e.g. Patient information or whistle-blowing policies)		
A11. Freedom of assembly and association (e.g. Trade union recognition)		
A12. Right to marry and found a family (e.g. fertility, pregnancy)		
P1.A1. Protection of property (e.g. Service User property and belongings)		
P1.A2. Right to education (e.g. accessible information)		
P1.A3. Right to free elections (e.g. Foundation Trust governors)		

7. Risk Grading

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7.1 Consequence of negative impacts scored (1-5)	2	7.2 Likelihood of negative impacts scored (1-5):	3	7.3 Equality & Human Rights Risk Score = Consequence x Likelihood scores:	6
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8. Analysis Outcome– The outcome (A-D) of the analysis is marked below ('X') with a summary of the decision

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X	8.1 The outcome selected (A-D):	8.2 Summary for the outcome decision (mandatory)
	A. Policy, strategy or service addresses quality of outcome and is positive in its language and terminology. It promote equality and fosters good community relations	<p>This policy is based on Section 5 of the MHA 1983. It has been compiled in line with the standard required by the code of practice to the MHA 1983 and also takes account of CQC feedback arising from inspections undertaken across the Trust.</p> <p>There are improvements planned for in s.9 mostly related to positive language of the policy towards the protected characteristics. Improvements also include taking into account that some groups have been impacted differently by holding powers than other. The policy needs to specifically mention these.</p>
X	B. Improvements made or planned for in section 9 (potential or actual adverse impacts removed and missed opportunities addressed at point of design)	
	C. Policy, service or strategy continues with adverse impacts fully and lawfully justified (justification of adverse impacts should be set out in section 3 above)	
	D. Policy, service or strategy recommended to be stopped. Unlawful discrimination or abuse identified.	

9. Equality & Human Rights Improvement Plan

Actions should when relevant and proportionate meet the different needs of people.

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Impact Reference(s) (from assessment)	What directorate (team) action plan will this be built into 	Action	Lead Person	Timescale	Resource Implications
N/A					