


Consent to Treatment Policy – Part 4 MHA 1983

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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:	Director of Corporate Affairs	1.2 Analysis Start Date:	12 December 2013
		1.3 Analysis Submission Date:	Submission 1 - 17 January 2014 Submission 2 - 4 September 2015 Submission 3 – 29 May 2019
1.4 Analysis Team Members:	1) Author / Editor: Jolene Pont – Practice Development Manager (Mental Health Law)		
1.5 If this is a cross agency policy/service or strategy please indicate partner agencies and their formal title	2) Frontline Staff: Amanda Burke, MHA Service Manager, Nadiah Jamaa / Matthew West – Mental Health Act Service Officers		
1.6 Completion Statement	3) I, being the author Practice Development Manager, 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.		
1.7 Policy Aim	To provide Trust staff with a clear policy and procedure to follow to ensure the Trust fulfils its obligations under Part 4 and 4A MHA 1983 – Consent to Treatment provisions.		
 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	Adam Churcher		
1.9 Reference Number	AC 161B		





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
	Recent Local Consultations		Research Findings
	Complaints / PALS / Incidents	X	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		Equality Diversity and Human Rights Annual Report
Please provide detailed evidence for the areas			
<ul style="list-style-type: none"> Mental Health Act 1983 and the associated Code of Practice; CQC MHA feedback following MHA inspections; Previous SCT S58/S58A Policy Internal monitoring through ward audits completed by ward managers/matrons; Changes to legislation inserted by the Health and Social Care Act 2012 Mental Capacity Act 2005 			

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 and policy identifies the need to provide information to a patient that is easily understandable to them	X	X							
3.2	X		This is an internal policy setting out the procedural requirements under Part 4 and 4A MHA 1983. It reflects the MHA 1983 and the associated code of practice and the MCA 2005 and ensures that clinical staff administer treatment to detained patients in accordance with the safeguards set out in legislation. This policy enables the Trust to meet its obligations under the Law and associated guidance by specifying what is required by the law in relation to treatment and consent to treatment provisions. This policy applies across all protected characteristics.	X	X	X	X	X	X	X	X	X
3.3		X	This policy authorises detained patients to be treated for mental disorder without their consent, even where the patient has capacity to consent but refuses treatment. Treatment in the absence of consent may breach Articles 3, 5 and 8 ECHR. However the policy does reflect the safeguards built into the MHA 1983 to prevent a breach of Human Rights, for instance requesting a CQC appointed Second Opinion Doctor to authorise treatment in the absence of									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
			consent, regular reviews of treatment, and the requirement to undertake a capacity assessment before authorising treatment.									
3.4		X	The policy does differentiate between children and adults. Certain treatment may not be provided to children (ECT) unless a SOAD approves the treatment, even where the child has capacity and gives his/her consent. This is a different approach to adults who only need to give capacitous consent. This is an additional safeguard to protect children and reflects s.58A MHA 1983.	X								
3.5		X	Section 4.3 of the policy refers to the administration of other treatments including surgical implantation of hormones to reduce male sex drive. This treatment could impact on a patient's human rights, however this treatment may only be given where the patient consents, a SOAD and a multidisciplinary panel appointed by the CQC confirms that the consent is valid, and the SOAD has consulted two statutory consultees before providing authorisation.									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	<p>This policy ensures compliance with the law under the MHA 1983 and code of practice. The policy clearly states that medical treatment for mental disorder may only be provided to detained patients where the patient provides valid consent or where the treatment is authorised by a Second Opinion Appointed Doctor (appointed by the CQC). Treatment is not authorised or administered with reference to any of the protected characteristics and only refers to clinical need and best interests.</p> <p>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.</p>	X	X	X	X	X	X	X	X	X
4.2 Advance equality of opportunity between people from different groups; Help	<p>The policy requires authorised treatment to be reviewed by the RC regularly to ensure treatment continues to be available and appropriate to the patient.</p> <p>The policy is to be adhered to in all cases without discrimination or reference to any of the protected characteristics and is to be applied to all detained patients without exception.</p>	X	X	X	X	X	X	X	X	X
4.3 Foster Good relations between people from different groups Help	<p>The treatment of patients detained under the MHA 1983 is a fundamental requirement to enable the patients to regain their health and well being. Treatment is defined not only as medication but as nursing, psychological intervention and habilitation and rehabilitation. A clear policy which reflects the current legislation will enable staff to act consistently towards all patients and allow patients to see that staff are following a policy which reflects the law.</p> <p>This policy ensures a consistency of approach as far as possible and encourages a good relationship between the patient, clinicians and ward staff.</p>	X	X	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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<p>5.1 The arrangements to monitor the effectiveness of the policy, strategy or service considering relevant characteristics? E.g.</p> <ul style="list-style-type: none"> ↳ 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 	<p>Authorisation of treatment is recorded on statutory forms. The originals are filed with the MHA Office who review completion and timeliness of submission. Adherence to the policy will be monitored through the receipt and scrutiny of treatment authorisation forms.</p> <p>The CQC routinely monitor the trust's adherence to consent to treatment provisions and compliance with Trust policy, areas of non-compliance are raised in their reports to the Executive Director of Nursing and the Strategic Directos for social care and partnerships and these are reported through the MHA Committee to the Board.</p> <p>Giving due regard to the above, the policy will also be kept under review by the MHA Services team to ensure it continues to reflect current legislation and guidance in England and Wales.</p>
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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)	3.1 & 3.2	
A3. Prohibition of torture, inhuman or degrading treatment (e.g. Service Users unable to consent)		3.3, 3.4
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)		3.3
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)		3.3, 3.4
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)	3.1	
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)	3	7.2 Likelihood of negative impacts scored (1-5):	2	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)
X	<p>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> <p>B. Improvements made or planned for in section 9 (potential or actual adverse impacts removed and missed opportunities addressed at point of design)</p> <p>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)</p> <p>D. Policy, service or strategy recommended to be stopped. Unlawful discrimination or abuse identified.</p>	<p>This policy is based on Part 4 and 4A of the MHA 1983. It has been compiled in line with the standards required by the code of practice to the MHA 1983 and also takes account of CQC feedback arising from inspections undertaken across the trust. Although the principle of giving treatment in the face of a competent refusal from a patient does prima facie breach Article 3, 5 and 8 – the policy reflects safeguards built into the policy which ensures that only appropriate treatment is given to the patient and treatment is properly authorised by a SOAD and regularly reviewed by the RC. Adherence to the consent to treatment provisions of the MHA 1983 is monitored by ward staff, MHA teams and through CQC inspection.</p>

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					