

## Hospital Managers Power of Discharge Policy

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Consultation Groups	Associate Hospital Managers, Mental Health Law
Approved by	Mental Health Law Monitoring Group
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Name and job title of author	Guy Davis - Associate Director of Mental Health Law
Executive Director Lead	Paul Gilluley – Chief Medical Officer
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Services	Applicable
Trustwide	X
Mental Health and LD	
Community Health Services	

### Version Control Summary

Version	Date	Author	Status	Comment/Changes
1.0	19-12-01	Guy Davis	Final	
2.0	12-05-05	Guy Davis	Draft	Tabled at the Trust Board Mental Health Act Sub-Committee on 13 <sup>th</sup> May 2005.
2.1	11-08-05	Guy Davis	Final	Factual, spelling and grammatical errors rectified.
3.0	12-05-08	Guy Davis	Review	<ul style="list-style-type: none"> <li>• MHA guidelines taken out (will form a separate document).</li> <li>• Adoption of the term 'Associate Hospital Managers' to bring into line with other Trusts and reference in the MHA Code of Practice.</li> <li>• More robust governance arrangements.</li> <li>• Account taken of Supervised Community Treatment.</li> <li>• New decision forms to cover all scenarios added to appendices.</li> <li>• Code of Conduct slightly amended and added to appendices.</li> </ul>
3.1	01-09-08	Guy Davis	Review	Factual and grammatical errors rectified.
3.2	13-10-08	Guy Davis	Review	Slight changes in language to reflect the volunteer position of Associate Hospital Managers – i.e. Managers are “asked” rather than “required” to do certain things.
4.0	16-07-10	Guy Davis	Draft	Substantially re-written following consideration of both pan-London project (setting out general standards) and the new management arrangements for Associate Hospital Managers.
4.1	27-07-10	Guy Davis	Draft	Amendments following Mental Health Act sub-committee meeting and individual comments from Associate Hospital Managers.
4.2	24-08-10	Guy Davis	Draft	Amendments following further comments by Mental Health Act Administration and Associate Hospital Managers. Code of Conduct removed from appendices for further consideration.
4.3	21-10-10	Guy Davis	Final	Following Trust Board consideration on 30.09.10: <ul style="list-style-type: none"> <li>• Para 3.5 added to clarify liability for decisions;</li> <li>• Para 16.2 amended to include medical consideration of the need for summary discharge.</li> </ul>
4.4	29-11-10	Guy Davis	Final	New 3.5 inserted to confirm accountability
4.5	17-04-12	Guy Davis	Final	New 9.15 inserted to confirm disposal of reports. New 9.16 inserted re change of contact details.

4.6	17-12-13	Guy Davis	Review	Para 2.9 re difficulties connected with 'renewal hearings'; unnecessary so removed. In Para 3.0 onwards, wording amended to more accurately reflect the wording in section 23 pertaining to Foundation Trusts. Para 6.0 onwards amended to include how re-appointment might be considered and how performance concerns might be addressed.
4.7	15-06-15	Guy Davis	Review	References to revised Code of Practice replace 2008 Code of Practice references.  Procedure elements removed and incorporated into a new Procedure and Guidance Document.
4.8	17/09/18	Guy Davis	Final	Minor grammatical changes and para 6.6 re-worded.
4.9	28/11/19	Guy Davis	Final	Standards of Business Conduct policy referenced and Reappointment process updated.
4.10	02/09/21	Guy Davis	Draft	Minor grammatical changes; Reference to MHA Sub-Committee removed; In 3.5 inserted reference to independence in relation to decisions of panels potentially being made subject to judicial review by the Trust; In 3.6 inserted reference to 'Declaration of Interests'; References to 'approval' of AHM appointments removed;

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### **Executive Summary**

This policy sets out the law and the responsibilities of East London NHS Foundation Trust in relation to the Hospital Managers Power of Discharge under section 23 of the Mental Health Act 1983 and the associated Code of Practice.

## 1.0 Introduction

- 1.1 This policy should be read in accordance with the Mental Health Act ('the Act', Mental Health Act Code of Practice, associated legislation, policy and guidance.
- 1.2 The term 'patient' is used and defined in both the Act and the Code of Practice, so for consistency this policy uses the same term.
- 1.3 References to responsibilities of the Associate Director of Mental Health Law and Lead Nurse for Mental Health Law, include anyone else so delegated.

## 2.0 Statutory Framework

- 2.1 Where an application for detention has been duly completed, section 6(2) of the Act gives the Hospital Managers the authority to detain the patient. Section 145(1) defines the 'Managers' as *"in relation to a hospital vested in a Foundation Trust, the Trust."* Therefore, any reference in this policy to 'Hospital Managers' or 'the Managers' means East London NHS Foundation Trust ('the Trust').
- 2.2 The Act gives the Managers certain powers and in addition to the power of discharge exercised by Responsible Clinicians and patient's Nearest Relatives, section 23(2)(a) gives the Managers the power to order discharge from detention and section 23(2)(c) gives the Managers the power to order discharge of Community Treatment Orders.
- 2.3 The power of discharge can be exercised for patients detained under the following unrestricted sections:

- 2 – admission for assessment;
- 3 – admission for treatment;
- 4 – admission for assessment in cases of emergency;
- 17A – community treatment order;
- 37 – hospital order;
- 45A – hospital direction (where prison release date has been reached);
- 47 – transfer direction (those serving/served sentences of imprisonment);
- 48 – transfer direction (other types of prisoners);
- Unrestricted orders under section 5 of the Criminal Procedure (Insanity) Act 1964 (for those orders that commenced prior to 31st March 2005);

and with consent from the secretary of state, the following restricted sections:

- 37/41 – hospital order with restriction order;
- 44 – committal to hospital;
- 45A – hospital and limitation direction;
- 47/49 – transfer direction with restriction direction;
- 48/49 – transfer direction with restriction direction;
- Restricted orders under section 5 of the Criminal Procedure (Insanity) Act 1964 (for those orders that commenced prior to 31st March 2005).

The Managers cannot discharge any other compulsory powers.

- 2.4 Pertaining as it does to Foundation Trusts, section 23(5) states that any three or more persons authorised by the Board can exercise the power of discharge, each of whom can be neither an executive director of the Board nor an employee of the Trust. In practice this means that the power can be exercised by a panel of non-executive directors and/or what this policy refers to as 'Associate Hospital Managers', who can be appointed to act on behalf of the Trust to consider the exercise of this power.
- 2.5 The Act does not set out a mechanism as to how the Hospital Manager's power of discharge should be considered and neither does it state when the Managers should consider exercising this power, however, the Mental Health Act Code of Practice at 38.12 states that the Hospital Managers:
- may undertake a review of whether or not a patient should be discharged at any time at their discretion;
  - must undertake a review if the patient's responsible clinician submits a report to them under section 20 of the Act renewing detention or under section 20A extending the CTO; and
  - should consider holding a review when they receive a request from a patient (who may be supported by their independent mental health advocate (IMHA), Independent Mental Capacity Advocate (IMCA), attorney or deputy or a carer; and
  - should consider holding a review when the responsible clinician makes a report to them under section 25 barring an order by the nearest relative to discharge a patient.
- 2.6 In accordance with the Trust's Mental Health Act Scheme of Delegation, it is for the staff of the Mental Health Law team to consider the need for review and to make the appropriate arrangements (see Hospital Managers Power of Discharge Procedures and Guidance document).

### **3.0 Governance**

- 3.1 The Trust, through the relevant committee, shall ensure that it has sufficient numbers of appointed Non-Executive Directors and/or Associate Hospital Managers to be able to fulfil its function under section 23 of the Mental Health Act (in accordance with chapter 38 of the Code of Practice).
- 3.2 The Code of Practice at 38.10 states that panels should understand equality issues and that there are sufficient numbers of panel members with a specialised understanding of the specific needs of particular groups of patients and that panel members can communicate effectively with those patients. The Code lists the following as examples:
- patients from minority cultural or ethnic backgrounds;
  - patients with physical and/or sensory impairments;
  - patients with learning disabilities and/or autistic spectrum disorders.
- 3.3 When the Mental Health (Amendment) Act 1994 altered the definition in the Act of 'the managers', from 'the directors of the Trust' to 'the Trust', the NHS Management Executive letter TEL (94)2 noted that "Non-Executive Directors [undertaking this function] will no longer be personally liable for decisions taken about the discharge of detained patients; liability will rest with the Trust as a body." It follows that Associate Hospital Managers are similarly free of such liability.

- 3.4 Associate Hospital Managers are ultimately accountable to the Trust Board, but report to and are managed by the Associate Director of Mental Health Law.
- 3.5 An Associate Hospital Manager is a person who is not an officer (employee) of the organisation and who does not have any financial interest in it or any other potential conflict of interest. Associate Hospital Managers are not therefore independent of the organisation in the same way that members of the First-Tier Tribunal Service (Mental Health) panel are; they are volunteers who are independent of the clinical teams assessing and treating patients who are subject to compulsory powers. It should be noted however, notwithstanding 3.3 above, that a panel made up of non-executive directors and/or Associate Hospital Managers is sufficiently independent to have its decisions challenged through judicial review, by the Trust itself.
- 3.6 All Associate Hospital Managers are asked to act in accordance with the 'Associate Hospital Managers Code of Conduct' and the Trust's 'Standards of Business Conduct' policy, for which they must submit the relevant 'Declaration of Interests' forms.

#### **4.0 Recruitment of Associate Hospital Managers**

- 4.1 The Mental Health Law Monitoring Group will identify the need for and authorise recruitment of Associate Hospital Managers. Advertisements for posts will be coordinated in partnership with the People and Participation department. Although Associate Hospital Managers are volunteers, the Trust's Recruitment policy must be followed.
- 4.2 Interview panels should comprise of at least two people; one of whom should be the Associate Director of Mental Health Law or the Lead Nurse for Mental Health Law. An experienced Associate Hospital Manager may also be asked to form part of the panel.
- 4.3 Successful candidates cannot attend any hearings until the recruitment process is completed.
- 4.4 Appointments are for three years. The Trust will keep a register of all currently appointed Associate Hospital Managers.
- 4.5 Towards the end of each term of appointment, the Associate Hospital Manager's appointment will be reviewed and a decision taken as to whether or not the Associate Hospital Manager will be re-appointed, which will be confirmed in writing by the Associate Director of Mental Health Law.
- 4.6 Associate Hospital Managers should notify the Associate Director of Mental Health Law in writing if they wish to resign their appointment. Although no notice period is required, account should be taken of any panel reviews the Associate Hospital Manager may be booked to attend at the time of giving notice.

#### **5.0 Induction and Training**

- 5.1 All newly appointed Associate Hospital Managers must attend as an observer at no less than three Hospital Manager's hearings before they can be invited to sit on a panel (previously experienced Associate Hospital Managers may

be exempt from this requirement subject to the agreement of the Associate Director of Mental Health Law). They are also asked to undertake a programme of induction that will include basic mental health law training and to meet with a Mental Health Law Manager/Supervisor to go through relevant procedures.

- 5.2 Associate Hospital Managers will be asked to attend other training during the term of their role.

## **6.0 Conduct, Attendance and Remuneration**

- 6.1 Associate Hospital Managers are volunteers who are asked to commit their time for reviews of compulsory powers under the Mental Health Act, as well as for meetings and training.
- 6.2 If at any time there are concerns about the conduct or performance of an Associate Hospital Manager, the Trust may decide that the Associate Hospital Manager does not sit on any panels or attend Trust premises for a period of time until sufficient investigation has taken place to determine an outcome.
- 6.3 In addition to overall performance, if an Associate Hospital Manager fails to attend an arranged review, required training or misses a number of consecutive meetings, this will be taken into consideration when deciding if their appointment is to continue.
- 6.4 Lateness or non-attendance at hearings is to be avoided and depending on the circumstances, may be considered very seriously due to the resulting distress it might cause to patients.
- 6.5 Should the need arise, the lead Executive Director for Mental Health Law and Associate Director of Mental Health Law will decide on the co-ordination and nature of any investigation, one of whom will sign-off the final outcome letter.
- 6.6 An Associate Hospital Manager's appointment may be cancelled for other reasons, for example when the Trust ceases to provide relevant services.
- 6.7 It is recognised that competing commitments may require Associate Hospital Managers to temporarily withdraw from their role, and so they are asked to advise the Associate Director of Mental Health Law accordingly. In such cases on their return, AHMs may be asked to undertake training (inc. observing hearings) before being allowed to undertake any reviews of detention or Community Treatment Orders. However, a prolonged absence may give rise to the Associate Hospital Manager's appointment being terminated.
- 6.8 When asked to carry out duties on behalf of the Trust, Associate Hospital Managers may claim an allowance for attendance, as determined by the appropriate Trust Committee. Claims must be approved by an authorised signatory who will then forward to the payroll department.
- 6.9 The payment of fees to Associate Hospital Managers does not mean that they would be viewed as employees for employment law purposes. The ethos of the role of an Associate Hospital Manager is that of a voluntary service to the Trust.

## **7.0 Reappointments**

7.1 As per 4.4 above, appointments are for 3 year periods from the date of first appointment. Towards the end of each period of appointment, the Associate Director of Mental Health Law will:

- Ask the AHM to confirm their wish to be reappointed and if so, to complete a Self-Review Form for return to the Associate Director of Mental Health Law;
- Examine a selection of relevant panel decision forms;
- Consider any feedback received from others about the AHM;
- Invite the AHM for an interview if either the AHM or Associate Director of Mental Health Law requests it.
- Arrange appropriate support for the AHM if reappointment is to be incumbent on it; i.e. training.
- Consider any other material issues.

7.2 The Associate Director of Mental Health Law will confirm reappointment in writing to the AHM and all current appointments and termination of appointments are recorded in the Mental Health Law annual report.

### Role Description

<b>Title:</b>	Associate Hospital Manager
<b>Grade:</b>	Volunteer
<b>Hours:</b>	Sessional according to need and availability
<b>Responsible to:</b>	Associate Director of Mental Health Law
<b>Accountable to:</b>	Trust Board

### Job Summary

- Act on behalf of East London NHS Foundation Trust to consider the use of the power of discharge of patients who are subject to compulsory powers under the Mental Health Act 1983.
- This involves sitting on review panels, analysing written and oral evidence from Trust practitioners, patients, relatives and other relevant people, and then making a judgment as to whether or not the patient should be released from compulsory powers.

### Core Competencies

- The ability to communicate appropriately and effectively, both verbally and in writing, with patients and their representatives, health and social care practitioners, Mental Health Act Administrators and fellow Associate Hospital Managers, where tact and diplomacy is often required especially in explaining procedures and decisions to those who are directly affected and who may not fully understand or agree with outcomes.
- The role requires the post holder to have and maintain knowledge of the Mental Health Act in terms of the compulsory powers that patients may be subject to and the criteria that must be addressed if discharge is being considered.
- The ability to analyse, question and make judgments on a variety of documents and oral evidence from health and social care practitioners, patients and their representatives.
- The ability to co-ordinate the review proceedings in the capacity of a chairperson.
- The ability to use relevant digital technology to undertake the role is essential.