

‘Leave’ For Informal Patients Policy

Version number :	1.5
Consultation Groups	Mental Health Law Monitoring Group
Approved by (Sponsor Group)	Mental Health Law Monitoring Group
Ratified by:	Quality Committee
Date ratified:	28 th July 2021
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Implementation Date :	June 2021
Last Review Date	June 2021
Next Review date:	June 2024

Services	Applicable
Trustwide	Yes
Mental Health and LD	
Community Health Services	

Version Control Summary

Version	Date	Author	Status	Comment
1.0	30/09/05		Final	Addition of reference to Anti Absconding Workbook
1.1	01/10/08		Final	Changes to Mental Health Act 1983 incorporated.
1.2	02/08/11		Final	Removed procedures for when informal patient goes absent or missing. This is covered in 'Missing and AWOL' policy. Procedure regarding informal CTO patients added.
1.3	17/12/14		Final	Reference made to Deprivation of Liberty Safeguards Policy and informal patients who lack capacity
1.4	08/01/18		Final	Reference made to mental capacity act policy Addition of requirement that information detailing an informal patients right to leave is displayed in the clinical area
1.5	10/06/21	Johanna Turner		

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Executive Summary

An informal (also called voluntary) patient is defined as a patient who is not detained under the Mental Health Act 1983.

Informal patients are not subject to statutory powers and therefore free to come and go as they please.

The Trust's duty of care is applicable and should be considered for informal patients.

A leaflet regarding informal patient's rights is included in the welcome pack.

All in-patients are subject to a comprehensive risk assessment.

A risk assessment by the Multi-Disciplinary Team should take place if there are any concerns pertaining to the leave of an informal patient.

It may be necessary to assess an informal patient for detention should concerns be raised as to their risk to self, others or from others.

Informal patients could be considered missing or absent from the ward and correct procedures must be followed in cases where a person is thought to be at risk.

This Policy will be monitored via complaints received and incidents reported.

1. INTRODUCTION

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:the lawful detention....of persons of unsound mind.... (Article 5(1) of the European Convention on Human Rights)

The purpose of this policy is to provide clear instruction and guidance for practitioners when informal/voluntary in-patients (those patients who are not detained pursuant to the Mental Health Act 1983) are intending to leave the ward or hospital setting (as distinct from those patients wandering off the ward due to a confused state of mind).

There is no provision in this document for the actual granting of leave for informal patients as such patients are not subject to statutory powers and are therefore free to come and go as they please. There are however, some very important issues to consider.

Related Trust Policies are:

- Door-Locking Policy
- Missing and Absent Without Leave Policy
- Clinical Risk Assessment Policy
- Observation Policy
- Deprivation of Liberty Safeguards Policy
- Mental Capacity Act 2005 Policy

2. DUTY OF CARE

Practitioners need to be aware of the Trusts duty of care as it applies to informal patients. There is a responsibility for ensuring that the current whereabouts of patients is known at all times and that their safety and those of others is maintained. The fact that the patient is not detained under the Mental Health Act does not necessarily imply that they are well enough to leave the in-patient area without the knowledge of the staff charged with providing their care.

3. RISK ASSESSMENT AND MANAGEMENT

- All areas providing in-patient care should ensure that on admission, patients are made aware of their rights as an informal patient. A leaflet is included in the in-patient welcome pack and information should be displayed prominently on the ward reminding informal patients that they are free to leave.
- All patients should be asked to approach staff and discuss their plans with the clinical staff before they leave the confines of the area. This should be considered as normal practice as part of the general awareness of whereabouts of individuals for example for fire safety purposes.
- All in-patients should be subject to comprehensive and current multidisciplinary team assessment as to their perceived safety, risk of self-harm and/or harm to others. This assessment should be clearly recorded in the patient's medical notes.

4. ACTION TO BE TAKEN IF AN INFORMAL PATIENT WISHES TO LEAVE

- If an informal patient wishes to leave the clinical area, staff should have regard to the completed risk assessment.
- If the risk assessment and current presentation of the patient suggests that there are no grounds for preventing the patient from leaving, then s/he should be allowed to go. The patient should of course be asked how long they will be away and where they are going, in case any emergency should arise. An offer to accompany the patient may also be appropriate for consideration. All this should be clearly documented in the patient's medical notes.
- A failure to allow the patient to leave in the above situation would constitute an unauthorized deprivation of liberty and almost certainly lead to a finding of unlawful detention in the event of a complaint or claim.
- If there is some concern i.e. a reason to believe that the patient or any other person would be at risk of harm if the patient were to leave the confines of the clinical area, the clinical staff should at first attempt to explain their concerns in the hope that the patient will make their own decision to stay. Patients should not be threatened with

'sectioning' as a means to persuade them to stay; this would amount to *de facto*¹ detention and would almost certainly be viewed as unlawful.

- If there are real concerns and the patient is insisting on leaving, the clinical staff should consider whether it would be necessary to prevent the patient from leaving. There must be legal authority take this action and therefore use of the provisions in the Mental Health Act 1983 must be considered.
- In the event that an assessment for detention under sections 2 or 3 could not be facilitated in the first instance due to the urgency of the situation, consideration will need to be given to the use of section 5 which allows a person to be detained under the Mental Health Act 1983 even though they are already an in-patient in hospital.
- Subsection (2) of section 5 allows the Registered Medical Practitioner or Approved Clinician (or Nominated Deputy – the Duty Doctor) in charge of the treatment of the patient to give authority for the patient to be detained for up to 72 hours until a formal assessment for detention under sections 2 or 3 can be completed.
- In the absence of the practitioners described above and in a case of immediate urgency where the clinical staff need to use reasonable force (including locking doors) to prevent the patient from leaving, it will be necessary for a nurse of the prescribed class² to use subsection (4) of section 5 as the appropriate authority. This allows the patient to be prevented from leaving for up to 6 hours until one of the above practitioners arrives.
- In the absence of any of the practitioners described above so that use of the Mental Health Act is impossible, common law or Mental Capacity Act 2005 (MCA) powers can be relied upon only until the powers under the Mental Health Act 1983 can be instigated. However, common law powers cannot be used as an alternative to the Mental Health Act 1983.
- If an informal patient who is subject to a Community Treatment Order under section 17A wants to leave and the clinical staff wish to prevent this, the holding powers under section 5 do not apply. The legal authority to detain in this situation can only be found by the Responsible Clinician exercising the power of recall under section 17E. The urgency of the situation may require that common law or MCA powers have to be relied upon until the Responsible Clinician can serve the recall notice.

¹ In fact

² Registered Mental Health or Learning Disability Nurse

5. CHILDREN

All the principles described above can also apply to children, but additional authority to care for, treat and restrict liberty may be found via for instance, parental consent.

6. INFORMAL PATIENTS LACKING CAPACITY

There may be circumstances where patients who are admitted to a ward, who do not have capacity to agree to their admission. In these circumstances, it is important for the clinical team to have regards to and follow the Deprivation of Liberty Safeguards Policy if it is considered that the care and treatment being provided amounts to a deprivation of liberty. There have been a number of judgements in the UK Courts and the European Court of Human Rights and further legal judgements are likely. Currently the key factors, set out in the recent supreme court judgement in the 'Cheshire West' case apply an 'acid test' to be considered:-

- Is the person subject to continuous supervision and control? AND
- Is the person free to leave?

If the answer to the first question is yes and the answer to the second question is no, then it is likely that the person will be deprived of their liberty and action should be taken to follow the safeguard procedures which are set out in the policy. It is not relevant that the person is not actually asking or attempting to leave the ward, the key issue is whether they would be allowed to leave, should they request to.

6. REFERENCES

Mental Health Act Code of Practice and Mental Health Act Reference Guide - http://elfintranet/our_organisation/mental_health_law.asp

Children Act 1989 - www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

European Convention on Human Rights - <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

Mental Capacity Act 2005