## Hospital Managers Power of Discharge Policy

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<th>Version</th>
<th>4.8</th>
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<td>Consultation Groups</td>
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<td>Approved by</td>
<td>Mental Health Act Sub-Committee</td>
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<td>Mental Health Act Sub-Committee</td>
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<td>Date ratified</td>
<td>24&lt;sup&gt;th&lt;/sup&gt; September 2018</td>
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<tr>
<td>Name and job title of author</td>
<td>Guy Davis - Associate Director of Mental Health Law</td>
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<tr>
<td>Executive Director Lead</td>
<td>Mason Fitzgerald – Director of Corporate Planning</td>
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<td>Implementation Date</td>
<td>31&lt;sup&gt;st&lt;/sup&gt; October 2018</td>
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<td>1&lt;sup&gt;st&lt;/sup&gt; October 2021 (3 yearly)</td>
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## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Introduction</td>
<td>5</td>
</tr>
<tr>
<td>2.0 Statutory Framework</td>
<td>5</td>
</tr>
<tr>
<td>3.0 Governance</td>
<td>6</td>
</tr>
<tr>
<td>4.0 Recruitment of Associate Hospital Managers</td>
<td>7</td>
</tr>
<tr>
<td>5.0 Induction and Training</td>
<td>8</td>
</tr>
<tr>
<td>6.0 Conduct, Attendance and Remuneration</td>
<td>8</td>
</tr>
<tr>
<td>Appendix 1 – Role Description</td>
<td>10</td>
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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.
1.0 Introduction

1.1 The Mental Health Act 1983 is hereafter referred to as the 'Mental Health Act'.

1.2 This policy should be read in accordance with the Mental Health Act, Mental Health Act Code of Practice, associated legislation, policy and guidance.

1.3 The term ‘patient’ is used and defined in the Mental Health Act and Code of Practice so for consistency, this policy uses the same term.

1.4 References to responsibilities of the Associate Director of Mental Health Law and Clinical Nurse Specialist in Mental Health Law include anyone else delegated to assume those responsibilities.

2.0 Statutory Framework

2.1 Where an application for detention has been duly completed, section 6(2) gives the Hospital Managers the authority to detain a patient under the Mental Health Act. 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 compulsory 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 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 earliest 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 East London NHS Foundation Trust 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.

3.0 Governance

3.1 The Associate Director of Mental Health Law shall ensure that the Trust has sufficient numbers of appointed Non-Executive Directors and/or Associate Hospital Managers to be able to fulfil its power as set out 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 them. 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 An Associate Hospital Manager is the appointment by the Trust of a person who is not an officer (employee) of the organisation and who does not have any financial interest in it. Associate Hospital Managers are not therefore independent of the organisation in the same way as the members of a Tribunal Service panel are, but they are volunteers who are independent of
the clinical teams assessing and treating patients who are subject to compulsory powers.

3.4 Although they are ultimately accountable to the Trust Board, Associate Hospital Managers report to and are managed by the Associate Director of Mental Health Law.

3.5 When the Mental Health (Amendment) Act 1994 altered the definition of ‘the managers’ from ‘the directors of the Trust’ to the ‘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.

3.6 Associate Hospital Managers are invited to meet on a quarterly basis at the Trust Board Mental Health Act Sub-Committee which is chaired by a Non-Executive Director appointed by the Chair of the Trust.

3.7 All Associate Hospital Managers are asked to act in accordance with the ‘Associate Hospital Managers Code of Conduct’.

4.0 Recruitment of Associate Hospital Managers

4.1 The Associate Director of Mental Health Law will identify the need for and authorise recruitment of Associate Hospital Managers.

4.2 Advertisements for posts will be coordinated by the Associate Director of Mental Health Law in partnership with the corporate recruitment officer in the Human Resources department.

4.3 Although Associate Hospital Managers are volunteers, the Trust’s Recruitment policy should still be followed.

4.4 Interview panels should comprise at least two people; one of whom should be the Associate Director of Mental Health Law or the Clinical Nurse Specialist in Mental Health Law. An experienced Associate Hospital Manager may also be asked to form part of the panel.

4.5 On recommendation by the Associate Director of Mental Health Law, the Chair of the Mental Health Act Sub-Committee shall approve the appointment of each Associate Hospital Manager.

4.6 Successful candidates shall not be asked to perform any functions or attend any hearings or meetings until such approval is completed.

4.7 Written confirmation of approval to successful candidates will be given by the Associate Director of Mental Health Law. Unsuccessful candidates will be similarly informed.

4.8 Appointments are for 1 year in the first instance and then for fixed terms of 2 years thereafter. The Trust will keep a register of all currently appointed Associate Hospital Managers.

4.9 Towards the end of each term of appointment, the Associate Director of Mental Health Law will conduct a review and decide whether or not the
4.10 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 reviews the Associate Hospital Manager is booked to attend.

5.0 Induction and Training

5.1 All newly appointed Associate Hospital Managers are asked to undertake a programme of induction that will include basic mental health law training, one to one session with a Mental Health Law Manager/Supervisor and attendance as an observer at no less than three Hospital Manager’s hearings (previously experienced Associate Hospital Managers might be partially exempt from this requirement subject to the agreement of the Associate Director of Mental Health Law).

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 The lead Executive Director for the Mental Health Act and Associate Director of Mental Health Law will decide on the co-ordination and nature of any investigation. The lead Executive Director will sign-off the final outcome letter.

6.6 An Associate Hospital Manager’s appointment may be cancelled for other reasons, such as 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.

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.
6.9 Claims must be authorised by an authorised signatory; the Associate Director of Mental Health Law or the Clinical Nurse Specialist in Mental Health Law, who will then forward to the payroll department. Those Associate Hospital Managers with self-employed status may submit invoices via the agreed procedure.

6.10 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.
Role Description

Title: Associate Hospital Manager
Grade: Volunteer
Hours: Sessional according to need and availability
Responsible to: Associate Director of Mental Health Law
Accountable to: 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 or can 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.

- Manage time effectively in terms of both availability to the Trust and conduct of reviews.